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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT,
L.P.,¹

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

NEXPOINT ADVISORS, L.P.,

Appellant.

Case No. 3:21-cv-03086-K

consolidated with:

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850; Dallas, Texas 75201.



v.

PACHULSKI STANG ZIEHL & JONES
LLP,

Appellee.

Case No. 3:21-cv-03088-K
Case No. 3:21-cv-03094-K
Case No. 3:21-cv-03096-K
Case No. 3:21-cv-03104-K

APPENDIX TO APPELLANT NEXPOINT ADVISORS, L.P.’S OPPOSITION TO APPELLEES’ JOINT MOTION TO DISMISS APPEALS AS CONSTITUTIONALLY MOOT

Appellant NexPoint Advisors, L.P., by and through its counsel of record, the law firms of Schwartz Law, PLLC and Jain Law & Associates PLLC, pursuant to Rule 7.1(i) of the Local Civil Rules of the United States District Court for the Northern District of Texas, hereby files its *Appendix to Appellant NexPoint Advisors, L.P.’s Opposition to Appellees’ Joint Motion to Dismiss Appeals as Constitutionally Moot* (the “**Appendix**”).

<u>Appendix Exhibit</u>	<u>Title of Document</u>	<u>Appendix Page Numbers</u>
A	<i>Final Applications for Compensation and Reimbursement of Expenses — Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge (November 17, 2021)</i>	App. 001 - 069

[Signature Page to Follow]

Dated: January 24, 2022.

By: /s/ Kristin H. Jain

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- and -

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 24, 2022, a true and correct copy of the foregoing *Appendix to Appellant NexPoint Advisors, L.P.'s Opposition to Appellees' Joint Motion to Dismiss Appeals as Constitutionally Moot* was served electronically via the Court's ECF system upon all parties of interest requesting or consenting to such service in this case.

/s/ Samuel A. Schwartz
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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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In Re:)	Case No. 19-34054-sgj-11
)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	November 17, 2021
)	9:30 a.m. Docket
Debtor.)	
)	FINAL APPLICATIONS FOR
)	COMPENSATION AND REIMBURSEMENT
)	OF EXPENSES
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
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For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
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For the Debtor:	Zachery Z. Annable Melissa S. Hayward HAYWARD, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7108
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For the U.S. Trustee:	Lisa L. Lambert OFFICE OF THE UNITED STATES TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75242 (214) 767-8967
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1 APPEARANCES, cont'd.:

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19 Recorded by: Michael F. Edmond, Sr.
20 UNITED STATES BANKRUPTCY COURT
21 1100 Commerce Street, 12th Floor
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - NOVEMBER 17, 2021 - 9:40 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Stacey Jernigan presiding.

5 THE COURT: Good morning. Please be seated. All
6 right. We have a setting this morning on numerous Highland
7 final fee applications -- nine, to be exact. So let's get our
8 appearances.

9 Mr. Pomerantz, are you taking the lead for the Debtor fee
10 applications this morning?

11 MR. POMERANTZ: Yes, Your Honor. Jeff Pomerantz,
12 John Morris, and Greg Demo appearing on behalf of Pachulski
13 Stang Ziehl & Jones as the filer of our final fee
14 applications.

15 I know we have representatives of other of the Debtor
16 professionals on the phone who may want to make an appearance
17 and are available if Your Honor has any questions of them. I
18 will handle the main argument in connection with the objection
19 that was filed to all the Debtor professionals' fee
20 applications.

21 THE COURT: Okay. All right. So let's -- to speed
22 things up, I'm not going to take individual appearances right
23 now from every applicant, but when we get to the application
24 I'll ask for who's on the phone, and I may in some situations
25 have questions.

1 All right. Mr. Clemente, I see you there.

2 MR. CLEMENTE: Yes.

3 THE COURT: You're appearing for the Committee
4 professionals this morning?

5 MR. CLEMENTE: Yes, I am, Your Honor. Good morning.
6 It is good to see you. Matthew Clemente; Sidley; on behalf of
7 the Committee professionals. And we do have representatives
8 of FTI and Teneo on the phone, Your Honor.

9 THE COURT: Okay. Thank you. All right. We have
10 objections from NexPoint Advisors. Who do we have appearing?
11 Ms. Jain, are you taking the lead on that one?

12 MS. JAIN: Your Honor, I am not, although I am here.
13 Samuel Schwartz is on the line by video. In addition,
14 Athanasios Agelakopoulos is on the phone.

15 THE COURT: Okay.

16 MR. SCHWARTZ: Good morning, Your Honor. Sam
17 Schwartz on behalf of NexPoint Advisors. Nice to see you.

18 THE COURT: Okay. Thank you. Do we have the U.S.
19 Trustee appearing this morning?

20 MS. LAMBERT: Yes, Your Honor. This is Lisa Lambert
21 for the United States Trustee.

22 THE COURT: All right. Good morning. All right.
23 Well, I did not --

24 MS. LAMBERT: We have -- we have reviewed --

25 THE COURT: Go ahead.

1 MS. LAMBERT: We have reviewed the fee applications.
2 We sent some informal comments -- during the course of the
3 case, actually -- to several of the professionals, and we have
4 no additional input.

5 THE COURT: All right. Thank you, Ms. Lambert.

6 All right. Well, Mr. Pomerantz, I will turn to you and
7 ask how you intended to proceed.

8 MR. POMERANTZ: So, Your Honor, I don't intend on a
9 lengthy presentation. I assume Your Honor, as Your Honor
10 always does, has read carefully the responses. I did want to
11 raise and highlight a few points that were in our response.

12 NexPoint, who doesn't dispute that it has, at most,
13 \$38,000 in claims, is the only creditor, among \$300 million of
14 allowed claims in this case, who has objected to the final fee
15 applications. And as the Court commented at the confirmation
16 hearing and has commented on many times since, it is clear
17 that NexPoint is not really acting to pursue any true economic
18 interest, but is doing what NexPoint and the various Dondero
19 entities have done throughout the case, which is to just act
20 as a disrupter. And today's hearing is, of course, focused on
21 the professionals and trying to make them spend a lot more
22 time and money needlessly with a frivolous objection.

23 Why else would NexPoint seek to tell this Court that they
24 will spend what will likely be tens of thousands of dollars of
25 its own money to conduct a fee review, when, as we indicated

1 in our response, and NexPoint didn't object, for every million
2 dollars of reduction they would obtain, it would mean, at
3 most, \$130 increase in distribution, which, of course, is only
4 if their claims are valid.

5 Now that Mr. Schwartz has clarified in their latest
6 pleading that they are not seeking to have this Court approve
7 a fee examiner, which, of course, was not appropriate for the
8 reasons Your Honor indicated in the email sent to us and we
9 talk in our briefing, but rather the question I'm sure the
10 Court has, and I'm not sure Mr. Schwartz will have the answer
11 for, is why only now, at this stage of the case, when we're
12 here at the final fee hearing, is NexPoint coming in and
13 asking for 60 more days?

14 NexPoint received copies of every monthly fee application
15 that was filed in this case. NexPoint was aware that the fee
16 applications, final fee applications, would be filed 60 days
17 after the effective date and that it would have 30 days
18 thereafter to file objections. Ninety days.

19 So even if their argument that they didn't want to have a
20 fee fight during the case and that's the reason they didn't
21 object was a genuine argument -- which, of course, it's not --
22 they should have retained their experts to conduct their fee
23 review so that they would be ready to present to Your Honor at
24 this hearing what their objections are, as opposed to sit here
25 and ask Your Honor to continue the hearing for 60 days.

1 They have not made any showing in their papers why they
2 failed to do that and why they should be granted an additional
3 60 days, again, to conduct what they indicated is discovery.

4 Each of the quarterly fee applications is a part of this
5 Court's record, which contains all the bills for the
6 professionals. Accordingly, the Court does have the
7 evidentiary basis to support the granting of the fee
8 applications, and that each of the quarterly applications, as
9 well as in the final application, there has been extensive
10 analysis and argument and evidence on what the fees were in
11 these cases, how they were reasonable and necessary.

12 And I'm sure it's not lost on the Court, as it was not
13 lost on us, that a substantial portion of the fees in this
14 case, especially since Mr. Dondero decided to burn down the
15 house in September of 2020, is directly attributable to
16 litigating with NexPoint and the various entities.

17 The information provided in the fee applications address
18 the *Johnson* factors that the Fifth Circuit requires be
19 considered for approval, and we would ask Your Honor that Your
20 Honor overrule the objection and grant us our final fees and
21 expenses as requested.

22 I'm, of course, happy to answer any questions Your Honor
23 has with respect to our particular fee application and our
24 request.

25 THE COURT: All right. Thank you.

1 Mr. Clemente, I'll ask you next. Do you have something
2 you want to present in the way of an opening statement here?

3 MR. CLEMENTE: Yes, I do, Your Honor. And just, I
4 believe, four quick points.

5 First of all, again, for the record, Matt Clemente, Your
6 Honor.

7 First, obviously, Your Honor, each Committee professional
8 painstakingly complied with the detailed timekeeping and
9 reporting requirements necessary to demonstrate the
10 reasonableness of the fees and the necessity of the fees.

11 As Mr. Pomerantz alluded to, this is evidenced by the
12 voluminous fee applications that have been filed in this case.
13 In fact, Your Honor, FTI and Sidley each have filed 21 monthly
14 fee applications and six interim fee applications, and Teneo
15 has filed two monthly and obviously the final fee application
16 that is before Your Honor this morning.

17 Second, Your Honor, putting aside NexPoint's standing,
18 which is tenuous at best, the fact is NexPoint has had months
19 and months and months to hire an expert to review fee
20 applications. They did not, and instead they waited until the
21 final fee application hearing and have now asked for
22 additional time to do so -- importantly, all still without
23 demonstrating any reason why the final fee applications are
24 not reasonable, as demonstrated by the filings and the fact
25 that the fees contained therein are necessary.

1 The request is simply inappropriate and without support.

2 Third, Your Honor, to say that the case has been
3 contentious and complex I believe is an understatement. Given
4 the complexities, the issues, and parties, the case has
5 required significant professional time to navigate through the
6 multiple complex -- and in many cases, given the nature of the
7 Debtor, Your Honor, novel -- issues. And although the dollar
8 amounts in here are not small, Your Honor, the fees are
9 reasonable in that context, in light of the complexity and the
10 skill that was required to navigate through the case.

11 Finally, Your Honor, I wanted to just again say for the
12 record that each of the Committee professionals, as we
13 identified in our papers, has already discounted their fees by
14 ten percent since the beginning of the case, resulting in a
15 multimillion savings to the estate in the approximate amount
16 of \$2.25 million.

17 Your Honor, I am happy to answer any questions you may
18 have of me. As I mentioned, there are representatives of
19 Teneo and FTI on the phone as well, and they would be happy to
20 answer any questions you may have with respect to their
21 applications.

22 With that, Your Honor, the objection should be overruled
23 and the final fee applications should be entered.

24 THE COURT: All right.

25 MR. CLEMENTE: Thank you, Your Honor.

1 THE COURT: Mr. Clemente, you hit on something --

2 MR. CLEMENTE: Yes?

3 THE COURT: -- I was going to clarify. I wasn't sure
4 if I remembered reading that only Sidley had discounted its
5 fees by ten percent from the beginning or if it was all the
6 Committee professionals. It was all the Committee
7 professionals?

8 MR. CLEMENTE: It was. Yes, Your Honor. FTI and
9 Teneo.

10 THE COURT: Okay. Thank you.

11 All right. Well, Mr. Schwartz, you have heard and read
12 the arguments about NexPoint's standing and why so late in the
13 game is NexPoint suddenly wanting more time, a fee examiner, a
14 fee expert, whatever you're calling it. So I'll hear your
15 response to that and how you wanted to proceed today if I find
16 standing.

17 MR. SCHWARTZ: Certainly. Thank you, Your Honor.

18 So, standing is the right place to begin, Your Honor. You
19 have our papers. So the Court is aware, anticipating some of
20 the arguments that were in the supplemental replies, that my
21 office is new to the case and doesn't understand the history,
22 we continued to review the docket and the matters that have
23 been filed to get a better understanding, which has resulted
24 in a few things.

25 First, I believe the final applications were filed on or

1 around October 11th of this year, and shortly after that, as
2 the Court may know, at Docket 2934 the Litigation Trustee, Mr.
3 Marc Kirschner, filed a complaint. Included in that
4 complaint, NexPoint Advisors is a defendant.

5 I'll submit to the Court one aspect that I apologize was
6 not in our papers but I gleaned after we filed on Friday is
7 that, as a defendant in that complaint, which, again, was
8 filed while the fee applications were pending, NexPoint is a
9 defendant in eight claims. Included among those are arguments
10 that NexPoint should be liable for all claims in a piercing-
11 the-veil theory of this estate.

12 So when Mr. Pomerantz talks about there are \$300 million
13 of allowed claims, to the extent those claims are not paid --
14 excuse me, Your Honor, I'm a little hoarse this morning; I
15 apologize; pardon me -- to the extent those claims are not
16 paid, Mr. Kirschner is seeking to have NexPoint, as one of the
17 defendants, pay all of those dollars.

18 How does that dovetail here, Your Honor? Well, as the
19 Court knows, under Section 550 of the Code, Mr. Kirschner is
20 entitled to pursue claims only to the extent necessary to pay
21 allowed unsecured claims of the estate.

22 With that as a backdrop, to the extent there are any
23 adjustments to the fees that are being sought today -- in
24 gross numbers, Your Honor, there are, I believe, over \$50
25 million of fees being sought today -- if there was merely a \$2

1 million adjustment downward -- I'm sorry, a two percent
2 adjustment downward to those fees, which would be a million
3 dollars, that would reduce the damages that NexPoint would be
4 liable for under Mr. Kirschner's complaint, Your Honor.

5 So I think there are two aspects to standing. One, there
6 are claims that have been filed by NexPoint. I understand
7 those are being litigated, Your Honor. One. Two, NexPoint
8 now, since the filing of the final applications, is being sued
9 and is being asked to pay all unpaid claims of this estate.
10 And how the final fee applications are ultimately resolved I
11 think directly affects the amount of damages that NexPoint may
12 be liable for under that complaint. And of course, Your
13 Honor, NexPoint disclaims any liability under that complaint.
14 Nevertheless, I think that's a second aspect of standing, in
15 addition to NexPoint's claims.

16 And I think it's an important one, Your Honor, because I
17 would highlight that if Mr. Kirschner is going to bring the
18 costs and damages related to this bankruptcy, if any, against
19 NexPoint, including legal fees incurred, either now or
20 somewhere down the road the professionals' legal fees in this
21 case will need to be vetted, especially if NexPoint is going
22 to be asked to pay them.

23 So that's the standing component, Your Honor, and I think
24 there's two pieces to it.

25 Separately, in connection with the timing, we tried to

1 highlight in our papers it's the classic Catch 22 in terms of
2 when should NexPoint raise these particular objections. If it
3 did it during the course of the case to interim applications,
4 in my experience, Your Honor, there are two things that come
5 up, especially since 2013 and the *Baker Botts* decision. One,
6 the professionals I think legitimately complain that they're
7 being diluted by objections during the case because they
8 cannot be paid for responding to fee objections during the
9 case, number one. And number two, generally I find bankruptcy
10 courts say, look, these are interim applications, they are
11 going to be approved, we'll deal with the objections at the
12 end. Let's -- we'll save all this for the final applications.
13 That's the right time to deal with these matters.

14 And I think, Your Honor, the interim compensation order
15 that was entered in the case contemplated exactly that
16 process, that all rights of parties to object to fees will be
17 preserved for the final applications.

18 So I think NexPoint is timely, Your Honor, in appearing
19 today and saying, really, I think, importantly, one, don't
20 trust NexPoint. And I understand the litigation history of
21 the parties. NexPoint is trying to be thoughtful and bringing
22 Professor Bruce Markell to the table and saying, don't trust
23 us, trust Professor Markell and Legal Decoder, two experts we
24 intend to hire to do the process.

25 We highlighted, I think, Your Honor, as the Court is

1 aware, in our supplemental objection, we have not been able to
2 get through the fees, but we have been able to start
3 eliminating professionals that we no longer think objections
4 are appropriate. And that included Deloitte, Mercer.

5 And so the Court is aware, I believe Mr. Hesse is going to
6 make a representation with respect to the amount of work that
7 Hunton Andrews Kurth did in the case. And subject to that
8 representation, NexPoint is prepared to withdraw its objection
9 to that final application.

10 So, NexPoint is moving as diligently as it can to give the
11 Court, to answer your question -- I'll get to your question,
12 Your Honor, regarding what to do next, but just to give the
13 Court an idea of the volume of which we're trying to get
14 through. If you use the Pachulski average billable hour,
15 which is, I believe, \$1,001, and you took the \$50 million
16 that's in front of the Court today, you're talking about,
17 Judge, just at a thousand dollars an hour, 50,000 time entries
18 to go through. And certainly, as the Court knows, I know the
19 Court has looked at some of the time, that many of the time
20 entries are in tenths of an hour, half an hour. I'd submit to
21 the Court there are far in excess of 50,000 time entries to
22 get through, and that just was something that couldn't be
23 done, at least by my office, in the period of time that we
24 had.

25 So what could we do, Your Honor? We could start to

1 eliminate professionals.

2 And so, in addition, to not be punitive, understanding the
3 timing, the time of the year, NexPoint, in its supplemental
4 objection, highlighted that it was -- I was authorized to
5 release half the holdback, ten percent of the money that's
6 here.

7 Your Honor, I will tell you I did reach out to Mr.
8 Clemente and Mr. Pomerantz yesterday and told them, as a
9 concession, again, Your Honor, dealing with time of the year,
10 NexPoint is not intent on seeing any money held back from the
11 professionals right now. I think it's our view that the
12 professionals at issue who remain are -- they're solvent
13 firms, Your Honor. We're not concerned about, should the
14 Court reduce anyone's fees down the road, should you allow us
15 to go forward, that holdbacks are necessary today. I think we
16 can move past that point as well.

17 So NexPoint is trying to make concessions, Your Honor, to
18 move forward.

19 And then to answer your question, based on the declaration
20 that we provided to you in our first objection from Professor
21 Markell, he submitted he needed 60 days to review the time --
22 again, using Legal Decoder. And we gave you a declaration
23 from Legal Decoder in our supplemental objection. That we
24 would submit that we would file a supplemental -- a second
25 supplemental objection, Your Honor, at the end of those 60

1 days if there are any findings.

2 Based on that, Your Honor, subject to what the
3 professionals want, they could have a couple weeks or whatever
4 time they need to reply to that, and we could be back in front
5 of the Court, I think, fairly quickly. And the proposal as
6 outlined today does not leave the professionals in a position
7 where they're still waiting to hold money.

8 So, Your Honor, I went maybe a little further than the
9 Court had asked, but I wanted to address your two questions
10 and highlight how we're trying to be thoughtful in pushing
11 this matter forward in a way that is expeditious.

12 And I think, Your Honor, turning back to the complaint for
13 a moment, this is a process that should be done I think
14 appropriately now so the Court doesn't have to deal with
15 issues down the road in terms of the complaint that Mr.
16 Kirschner has prepared and claims that the fees that were
17 incurred in this case are now part of the damages in that
18 action. I think this is the time and place to resolve that
19 issue so we don't have to deal with it later.

20 With that, Your Honor, subject to your questions, I will
21 pause.

22 THE COURT: Let me ask you this. Is your whole
23 standing argument this lawsuit where NexPoint is a defendant
24 and may be found to be an alter ego or otherwise liable for
25 estate administrative expenses and claims? Is that your whole

1 standing argument?

2 MR. SCHWARTZ: No, Your Honor. Again, Sam Schwartz
3 on behalf of NexPoint.

4 No, Your Honor. One, NexPoint has several claims filed in
5 the case, which are all being litigated. I think Mr.
6 Pomerantz highlighted what he thought the economic value of
7 those claims may be.

8 So I think there are, actually, three aspects of standing,
9 Your Honor. One, the actual claims NexPoint has filed and
10 has, of which I believe there are at least seven claims in the
11 case, number one.

12 Number two, I think NexPoint has a -- has standing as a
13 defendant in the Kirschner litigation.

14 Three, I think NexPoint has standing as a party in
15 interest in the case under Section 1109 to pursue the course
16 it's on now.

17 So I think there are three aspects, Your Honor, that
18 provide NexPoint with standing to be here today.

19 THE COURT: All right.

20 MR. POMERANTZ: Your Honor, if I could address that
21 standing claim, or if Your Honor has further questions.

22 THE COURT: Yes. The seven claims, I'm not quite
23 clear. I thought that -- here's what I thought. I thought
24 there were, not prepetition claims, but \$14 million of an
25 administrative expense claim, split between NexPoint and

1 Highland Capital Management Advisors that was set to be tried
2 in December. December 7th and 8th. But as far as general
3 unsecured claims, I thought we were down to a handful of
4 employee claims that NexPoint purchased. Am I confused in my
5 facts?

6 MR. POMERANTZ: Yeah, Your Honor, that is -- that is
7 accurate. I think -- I'm not even sure of the number seven.
8 I think it's more like four.

9 Your Honor should know that we filed a supplemental
10 objection to those claims because the underlying employee
11 benefit documents do not allow the claims to be transferred.
12 So we have a separate and independent basis. But Your Honor
13 is not here to adjudicate those claims. But Your Honor has it
14 right that there are \$38,000 in claims that is the principal
15 argument of standing.

16 Now, look, I have a lot of respect for Mr. Schwartz. I've
17 known him for twenty years. But it's just not appropriate to
18 raise this argument of standing on this potential defendant
19 argument at the hearing today. He had the opportunity to file
20 a pleading. We would have objected. My belief is that the
21 law will show that being a putative defendant in a lawsuit
22 which may result in you having to pay some claims, it doesn't
23 give you the party-in-interest standing that he's saying.
24 But, unfortunately, he didn't give us the opportunity to do
25 this because he just made that argument to Your Honor.

1 And separate and apart from claims, there is no party in
2 interest. Why is NexPoint a party in interest if they don't
3 have claims? Their party in interest derives from what their
4 claims are.

5 And yes, Your Honor, they have \$38,000 of potential claims
6 that potentially will increase \$130 by each million. So maybe
7 they have technical standing under the law, but this is --
8 Your Honor has to appreciate their objections in this context
9 and what they're really asking the Court to do.

10 You know, Mr. Schwartz's sort of comment that they were
11 considerate of the professionals during the case in not having
12 them spend money that they may not be able to get reimbursed
13 by ASARCO, that rings entirely hollow, Your Honor. Mr.
14 Dondero has done nothing considerate in this case.

15 And Mr. Schwartz did not really answer the real question,
16 that even if they didn't want to have a fee fight, and, again,
17 even if this comment is genuine, why did they not hire Mr.
18 Markell for months and months and months and months?

19 Now, I understand Mr. Schwartz is new to this case, but
20 NexPoint is not. NexPoint has had Mr. Rukavina, who I know is
21 on the WebEx today. He did not sign onto the pleading. Who
22 knows? There could be several different reasons why. But Mr.
23 Schwartz can't come in here and say, I was hired three weeks
24 ago so my client should be given a free pass, when they sat on
25 their hands.

1 Then lastly, Your Honor, Mr. Schwartz says don't trust us,
2 trust Mr. Markell or Decoder. Your Honor, they're his hired-
3 gun experts. That doesn't ring hollow. They're going to be
4 at his direction. If there was -- if they really wanted some
5 independent fee examiner, they would have come early on in the
6 case, as parties sometimes do, sometimes the U.S. Trustee
7 does, sometimes the Court appoints one on their own volition.
8 That would have been an independent party. They didn't do
9 that. And to come out here and say, well, they'll be
10 independent, is just disingenuous.

11 THE COURT: Okay.

12 MR. POMERANTZ: Thank you, Your Honor.

13 THE COURT: All right.

14 MR. POMERANTZ: Oh, one last thing, Your Honor. I
15 would like to officially move into evidence the exhibits that
16 we identify on our witness and exhibit list.

17 THE COURT: All right. I don't have my docket up.
18 Let me pull it up. Maybe I wrote this down yesterday. Is it
19 3017, Docket Entry 3017? Is that the --

20 MR. POMERANTZ: I believe that's the case, Your
21 Honor.

22 THE COURT: Okay. Any objection to those exhibits?

23 MR. SCHWARTZ: Sam Schwartz for NexPoint, Your Honor.
24 No objection.

25 THE COURT: Okay. All of those exhibits will be

1 admitted at Docket Entry 3017.

2 (Debtor's exhibits received into evidence.)

3 THE COURT: All right. Before I give you a ruling on
4 standing and some of these other issues raised, I have a
5 question for Ms. Lambert, if she is -- if you can turn your
6 video and audio on.

7 MS. LAMBERT: I'm on, Your Honor.

8 THE COURT: Okay.

9 MS. LAMBERT: This is Lisa Lambert for the United
10 States Trustee, William Neary.

11 THE COURT: Thank you. This Decoder software that
12 has been discussed in NexPoint's pleading, I personally -- I
13 don't remember it ever being mentioned or used in any of my
14 cases. I'm wondering if you're familiar with it, and how
15 different is it from tools that the U.S. Trustee uses.

16 MS. LAMBERT: Your Honor, the tools that the U.S.
17 Trustee uses are proprietary, so I am reluctant to go into too
18 much detail on them. But the U.S. Trustee does have the
19 ability to evaluate, for example, the length of time on
20 conference calls, the length of time on hearings, and compare
21 the professionals, both across professionals and across --
22 across professionals in different fee apps and across
23 professionals within the same firm. So if multiple parties
24 are attending a hearing, do they bill the same amount of time?

25 And the U.S. Trustee did that in this case, and there were

1 some discrepancies when we looked at the fee applications.
2 However, the human element of that is being familiar with the
3 case, and I guess that is the U.S. Trustee's comment about
4 employing a fee examiner this late in the case. That person
5 can raise questions, of course -- these things don't match;
6 why don't they match? -- but doesn't have the knowledge of the
7 case.

8 And so there were times when the entries didn't match, but
9 because I was familiar with the case I could tell that the
10 associate had come in for part of the time and not the entire
11 time, or similar things like that, and I chose not to raise
12 those issues. Or in several instances, it was like one-tenth
13 of an hour difference, and in that context I have to assume
14 that people filling down the time were slightly differently in
15 a seven- to eight-minute increment.

16 I did raise some issues informally with Mr. Pomerantz.
17 But in terms of the types of issues that the Court likes to
18 see -- big issues about fee applications, recurring problems
19 in overstaffing, for example -- this, the U.S. Trustee did not
20 identify in the context of this case, which is a very
21 litigation-intensive case, and the Court and the U.S. Trustee
22 are very familiar with how much litigation has occurred in
23 this case, especially since late 2020.

24 So, considering all these factors, there were some
25 informal inquiries. I think the Court remembers that, early

1 on, the U.S. Trustee also objected to the Gardere fee
2 application.

3 And the standing issue to the U.S. Trustee is not relevant
4 in the sense that if somebody comes to the U.S. Trustee or the
5 Court and raises a fee issue, I think that we are charged with
6 independently looking at that fee issue. I did review the
7 NexPoint objections to evaluate whether there was something
8 that I had overlooked, but the problem is they just say, we
9 need the fee examiner now, rather than raising what the
10 concerns are so that I could run the data differently or look
11 at the data that I had run differently.

12 For this reason, it was not possible for me to
13 independently assess different factors than the U.S. Trustee
14 considered from the outset. But that is what we did under the
15 facts of this case.

16 THE COURT: All right. Thank you, Ms. Lambert.
17 That's helpful to know.

18 Well, first, as far as the standing, we've run into this
19 issue in many, many prior hearings, and I think the adjective
20 frequently used is tenuous. Tenuous standing. And so, once
21 again, I'm going to find technical standing here of NexPoint,
22 although a reasonable person might be suspect of the motives
23 here, given the unlikely significant economic impact on
24 NexPoint from a reduction in fees.

25 I've never, in my memory, I never remember a defendant in

1 an adversary proceeding arguing standing. Here, I get the
2 argument that Mr. Schwartz is making, that our client could,
3 at the end of the day, be liable for these fees. I mean, I
4 guess I get that.

5 But here, I mean, there are technically some unsecured
6 claims and potential administrative expenses that NexPoint has
7 against the estate. Unresolved, but they're pending out
8 there. So I do find technical standing.

9 Like Ms. Lambert said, this Court, just like the U.S.
10 Trustee, is duty-bound to independently examine fees, so I've
11 read the objections, I've pondered NexPoint's objections and
12 the points they raised, and so I'm finding standing here.

13 But as far as the renewed request for a fee examiner or a
14 fee expert and a request for a delay, I am denying NexPoint's
15 request. I agree with the argument of the Debtor and the
16 Committee that this is very late for such a request to be
17 made. While I totally agree with the argument that no one is
18 bound by an interim fee approval order, and just because you
19 don't object at the interim fee app stage, you know, that
20 doesn't mean you can't object at the final stage, it's one
21 thing to acknowledge that, but it's quite another, at the end
22 of the case, to say, okay, now we need much more time because
23 there's so much to review and we want a fee examiner.

24 You know, you still, in my view, have an obligation to
25 review interim fee apps and -- well, you can raise what you

1 want to raise at the end of the case, but I don't think it's a
2 fair argument that, well, we didn't want to bog down the case
3 with litigation over interim fee apps, or we decided not to
4 worry because we knew at the end of the day we could object.
5 That's just -- that just doesn't carry weight. I mean,
6 speaking for myself and the U.S. Trustee, we've reviewed,
7 probably in different ways but in complementary ways, the
8 interim fee apps along the road of the case.

9 I was curious to hear from Ms. Lambert, because I had a
10 hunch, not knowing what kind of proprietary software or means
11 they have, I had a hunch that, just from prior cases, that the
12 U.S. Trustee had comparison methods that are kind of similar
13 to what this Decoder software I think employs, because I've
14 seen those issues raised before, that, you know, we have
15 timekeepers billing inconsistent amounts for meetings or
16 hearings, or we have what that looks like duplication of
17 effort or too many timekeepers.

18 In contrast, I will tell people my secret sauce, if you
19 will. I kind of take almost what I consider an auditing
20 approach at the interim stages, where I look at overall
21 amounts. I look at categories. I do look at how many
22 timekeepers. And if there are timekeepers charging what seem
23 like very large amounts, I'll drill down a little. Like, who
24 is this person, you know, who's never been to court? What
25 kind of tasks are they working on?

1 If I notice someone consistently billing a ten- to twelve-
2 hour day just again and again and again, I might drill down on
3 that. Like, was that right before key hearings or not? And,
4 of course, I look at blended rates.

5 So that's kind of my approach at interim stages. I look
6 at sort of these broad categories, and if something seems
7 amiss then I'll drill down a little. And, of course, I hope
8 parties in interest are going to raise issues if they think
9 there's something that needs to be called to the Court's
10 attention.

11 So I'm saying all this because it just rings hollow with
12 me to get to the end, two years after a case was filed, and
13 say, well, it just wasn't a priority for NexPoint, and so now
14 we want more time and want a fee examiner.

15 As to the topic of fee examiners generally, or a fee
16 expert, I communicated this through my courtroom deputy,
17 Traci, a week or so ago: For one thing, I felt like it was
18 much too late for a fee examiner request. I very much believe
19 that an issue with fee examiners is they don't have context.
20 But maybe they do if they come in earlier in a case. But I
21 don't think a stranger to the case, no matter how wonderful
22 they are -- Bruce Markell is wonderful; I know him -- I just
23 don't think a stranger coming in this late can have a full
24 appreciation.

25 And people always say, "Know your judge." I've never

1 appointed a fee examiner in 15-1/2 years on the bench. I'm
2 not saying I never would, but it's not a party in interest
3 role that I am a fan of. I had bad experiences as a lawyer
4 with them. I feel like there's almost a -- there has been in
5 some cases, let's say, a tendency, I think, to, okay, I've got
6 to get a reduction in fees, no matter what, to justify my
7 role. I've seen cost-benefit where it was barely justified,
8 the cost of the fee examiner versus the cost of the fee
9 reduction.

10 So I'm not a fan of this role, just in case it's not
11 clear. I've never appointed one in 15-1/2 years. I'm not
12 saying I wouldn't. There might be a certain case where it is
13 absolutely justified. But this is a case where it was -- you
14 know, you've heard it said a million times, even if you're new
15 to the case -- very litigious. The major creditors were not
16 bank lenders or other holders of funded debt. They were
17 parties who had been in litigation, in some cases, more than a
18 decade with the Debtor. The Debtor, through its prior
19 management, did not want to pay these creditors, intended to
20 continue litigating with these creditors into the bankruptcy
21 case.

22 This was a debtor where there were conflicts of interest
23 argued immediately. This was a case where there was a motion
24 to transfer venue immediately that was, I guess, challenged by
25 former management.

1 It's a complex case. There are allegations of massive
2 transfers of value that have resulted in adversary
3 proceedings. This is a debtor where there was a web of 2,000
4 companies, or at least nondebtor funds, many of them offshore.
5 This is a case where Mr. Dondero and his related entities have
6 engaged 13 or 14 law firms at last count and have objected to
7 countless motions, have appealed countless orders, have asked
8 for stays pending appeal.

9 So I'm just not sure a stranger to the scene would fully
10 appreciate how this case was litigated from day one heavily.

11 The fees are high, but they're not eye-popping. They're
12 not *Purdue Pharma*. They're not *Boy Scouts*. They're not *PG&E*.
13 You know, for a case where there were well over a billion
14 dollars of claims asserted, if they in the aggregate are
15 approaching \$50 million, I'm not terribly surprised, given
16 what I've seen.

17 So, anyway, that's a little speechifying that you may or
18 may not have wanted to hear, but I am not delaying this and I
19 see no need for a fee expert. You know, fee apps are a very
20 normal part of what any court does. Okay? It is not at all
21 an exaggeration to estimate that I've reviewed thousands of
22 fee apps, and so has Ms. Lambert.

23 So, again, there might be a case where I am persuaded a
24 fee examiner is appropriate, but this is not the one.

25 Okay. So, knowing now that we are going forward today,

1 I'll ask Mr. Schwartz: What did you want to do, just for our
2 timing purposes? I didn't see a witness and exhibit list from
3 you, correct?

4 MR. SCHWARTZ: Correct, Your Honor.

5 THE COURT: All right. So, were you wanting to
6 examine applicants, representatives for applicants here, or
7 no?

8 MR. SCHWARTZ: Sam Schwartz for NexPoint, Your Honor.
9 At this point, Your Honor, we were not prepared to go forward
10 without the time to retain our expert -- or experts, I should
11 say -- to do the review, and then come forward as we had
12 requested in our objection and supplemental objection. So,
13 just given the timing, Your Honor, for those reasons, no, I
14 have no evidence to put on today.

15 THE COURT: All right. Well, Mr. Pomerantz, let me
16 suggest we start with -- well, I don't know. Given what I've
17 heard, just heard, I'm not sure what I'm about to suggest
18 makes sense.

19 What I was about to suggest is that, you know, Deloitte
20 and Mercer, and I guess I'm now hearing Hunton Williams,
21 those, the NexPoint professionals had already agreed to
22 withdraw any objection. So does it make sense maybe to take
23 those first? Because I hate for people to stay on the line
24 longer than they otherwise would.

25 I will say that I didn't have any questions or concerns

1 regarding Deloitte or Mercer. I don't have any questions to
2 ask. I did have one or two questions for Hunton Andrews
3 Kurth.

4 But shall we address those right off the bat? Again,
5 Deloitte looked like about \$553,000 over the entire life of
6 the case. Blended rates of \$389. No expenses.

7 Mr. Pomerantz, anything you want to put on the record on
8 that one?

9 MR. POMERANTZ: Your Honor, no, look, I'll make a
10 comment that will apply to all the Debtor's professionals that
11 are seeking fees. As Your Honor mentioned in Your Honor's
12 comments, this has been a very challenging, difficult, long,
13 litigious case. There's a lot of work that had been performed
14 by a lot of different professionals. I have personally worked
15 with most if not all of the Debtor professionals. I've relied
16 on them. And the (garbled) Your Honor indicated at the
17 confirmation hearing that resulted in this plan being
18 confirmed and going effective is a result of all the
19 professionals working together. Everyone had their role.
20 Everyone stayed in their lane. With respect to all the
21 lawyers, we, I think, did a good job in avoiding duplication
22 of service.

23 So I know, to the extent my opinion as an administrative
24 creditor or as Debtor's counsel matters to the Court, I think
25 each of the Debtor's professionals that are seeking fees are

1 totally reasonable and were significant contributors to the
2 success and that we would support their applications being
3 granted.

4 THE COURT: All right. Thank you. And is there
5 anybody who wanted to say anything, first, about Deloitte Tax,
6 LLP?

7 (No response.)

8 THE COURT: Okay. I am approving their entire final
9 request as reasonable and necessary under all of the Section
10 330 standards. So they may submit an order of final approval.

11 And I'm getting my professionals mixed up. Mercer was the
12 consultant regarding executive compensation, right? I've got
13 my piles going.

14 MR. POMERANTZ: That is correct, Your Honor.
15 Executive compensation and other, in connection with the KERP
16 and the KEIP, you know, for rank and file. But compensation-
17 related issues, as Your Honor may recall, at the beginning of
18 the case were fairly significant issues, especially as we were
19 transitioning to the board and we were trying to convince the
20 Committee and their professionals that it was warranted.

21 I should have also made a comment. My comments about the
22 professionals extend definitely to Mr. Clemente and Mr. Twomey
23 and FTI and the Teneo folks. You know, this was a contentious
24 case early on, and I think Mr. -- the Committee professionals
25 and the Debtor professionals did what I think bankruptcy

1 lawyers and restructuring professionals do best, is they build
2 consensus. They took a difficult situation and they put the
3 case on a positive track.

4 So I didn't want my comments before about Debtor's
5 professionals to imply that I didn't feel the same about
6 Committee professionals, because I certainly do.

7 THE COURT: Okay. Thank you. I appreciate that.

8 All right. Does anyone have anything they want to say
9 about Mercer?

10 (No response.)

11 THE COURT: All right. Well, my review is that they
12 have sought \$202,000 and some change in fees; \$2,400 and some
13 change in expenses. Again, for the entire amount of work in
14 the case. \$578 an hour blended rate. I find all of these to
15 be reasonable and necessarily incurred. So Mercer may submit
16 an order approving their entire request, and they may drop off
17 the line if they choose to do so.

18 All right. Well, Hunton Andrews Kurth. Let me get out my
19 pile. I feel like -- Mr. Hesse, are you out there on the line
20 for this one?

21 MR. HESSE: I am, Your Honor. Greg Hesse with Hunton
22 Andrews Kurth. And just so that Your Honor knows, I also have
23 one of my partners, Alex McGeoch, on the line. Mr. McGeoch is
24 a partner in the tax section of Hunton Andrews Kurth and was
25 leading the charge on the representation of Hunton during --

1 or, excuse me, of Highland during the course of the bankruptcy
2 case.

3 THE COURT: All right.

4 MR. HESSE: As Mr. Schwartz indicated, we had talked
5 about the scope of Hunton's representation, and I'm willing to
6 provide a statement on the record that will allow him to
7 withdraw the objection that they raised as to Hunton's fees,
8 so we can at least pull that off the table. And then I can
9 address or Mr. McGeoch can address any questions that the
10 Court has, if that would work for you, Your Honor.

11 THE COURT: Okay. That works.

12 MR. HESSE: Yes. And the conversations we've had
13 were relating to the scope of the work that Hunton was
14 providing. We had been retained initially as ordinary course
15 counsel to deal with tax-related issues and then as special
16 counsel related to tax issues.

17 The fees that were reflected on the billing invoices that
18 we had attached to our fee application relate solely to tax
19 work, including the defense of a 2008 tax appeal -- that was a
20 significant aspect of the work -- as well as ERISA-related
21 work.

22 And then, of course, Your Honor, as we explained to them,
23 there's also the administrative matters of being retained, you
24 know, with our disclosure, supplementing disclosures, as well
25 as filing fee -- preparing and filing fee applications.

1 And so that was the scope of the work. And based upon
2 that representation, it is my understanding that NexPoint will
3 withdraw their objection to Hunton's fee application.

4 THE COURT: Okay. Before I hear from them, I'm just
5 going to follow up. Did I understand there was a ten percent
6 discount overall for --

7 MR. HESSE: That is correct. That is correct, Your
8 Honor.

9 THE COURT: Okay. And the other thing, I know that
10 there was pretty heavy redaction on this one. So my
11 questions, I think you basically just answered. I wasn't
12 clear what the tax controversy -- you know, sometimes I saw
13 those words -- was about. I mean, I could tell work was being
14 done; I just wasn't real clear on what the work was. So you
15 said there was a 2008 tax appeal?

16 MR. HESSE: Yes, if I -- if I may --

17 THE COURT: Okay.

18 MR. HESSE: -- elaborate a little bit on that one,
19 Your Honor. Because it -- and that was the 2008 tax audit.
20 The defense of that audit on behalf of the Debtor was a
21 significant aspect of the work. There was at issue about \$166
22 million of potential taxable income, so it was a significant
23 number that was at play for the 2008 tax audit.

24 The reason for the -- one of the reasons for the heavy
25 redaction, Your Honor, is that it is -- the ongoing defense of

1 that audit is continuing to date. And so we are being very
2 concerned about maintaining the attorney-client privilege for
3 purposes of the ongoing discussions we are having with the
4 Internal Revenue Service over the audit.

5 THE COURT: Okay. And then you said ERISA work was
6 the other major component?

7 MR. HESSE: Correct.

8 THE COURT: Okay.

9 MR. HESSE: That's correct, Your Honor.

10 THE COURT: All right. Well, Mr. Schwarz, do you
11 confirm on the record that your questions have been answered?

12 MR. SCHWARTZ: Sam Schwartz on behalf of NexPoint.

13 Yes, Your Honor. Thank you. Based on Mr. Hesse's
14 representations to the Court, NexPoint does withdraw its
15 objection.

16 We did have some concerns, Your Honor, at the outset,
17 given the level of redactions. But we were able to talk
18 offline with Hunton Andrews Kurth and understand a bit more of
19 their time entries. So, yes, Your Honor, confirming that
20 NexPoint withdraws its objection with respect to Mr. Hesse's
21 firm.

22 THE COURT: Okay. Thank you. Anyone else wish to
23 say anything about Hunton Andrews Kurth?

24 (No response.)

25 THE COURT: All right. Well, I will approve all of

1 these fees and expenses as reasonable and necessarily
2 incurred.

3 And the number -- I think, Mr. Hesse, I think this is
4 after the ten percent discount -- is \$1,147,059.42 of fees.
5 Correct?

6 MR. HESSE: I believe that is correct, Your Honor.

7 THE COURT: All right. As well as --

8 MR. MCGEOCH: That's correct.

9 THE COURT: Okay. Thank you. As well as the \$2,747
10 of expenses.

11 All right. So you may submit an order, Mr. Hesse.

12 MR. HESSE: Thank you, Your Honor. May Mr. McGeoch
13 and I be excused?

14 THE COURT: You may. Thank you.

15 MR. HESSE: Thank you.

16 THE COURT: All right. Well, Mr. Pomerantz, why
17 don't we now take up Pachulski's fee application. What do you
18 want to say in support of that?

19 MR. POMERANTZ: Your Honor, we provided a fairly
20 lengthy statement in the introduction about the history of
21 this case, going through some of the major areas. If I was
22 called to testify, I would testify to the facts that are
23 contained in there, so I would essentially have that as being
24 my proffer.

25 As I indicated, Your Honor, we have worked very closely

1 with the other professionals to avoid any overlap in work. We
2 think we've done that.

3 We have also, as Ms. Lambert had indicated, throughout the
4 case had received comments from her. And in fact, with
5 respect to one of the pet peeves of the Trustee's Office that
6 she mentioned, which was different amounts for different
7 people in the same conversations, we've done our best to
8 eliminate that. As my team will tell you, at the end of every
9 call now I say, we're putting down x -- point five, point
10 eight, whatever it is -- to try to maintain consistency.

11 This has been a difficult and a challenging case. We're
12 not proud that there was \$50 million spent in what was
13 essentially an asset monetization plan. But unfortunately, a
14 large part of that was either being reactive to the litany of
15 litigation and appeals -- I think there's probably 25 to 30 of
16 those matters pending -- or, alternatively, having to jump
17 through hoops and spend an inordinate amount of time and
18 effort in pursuing what Your Honor has mentioned on many
19 occasions were simple note actions.

20 We did that closely with the board. I will mention, and I
21 don't believe Mr. Seery is on, but Mr. Seery would often have
22 questions for me in terms of our fees. And notwithstanding
23 that, you know, there was a lot of work to be done, the board
24 continued and throughout the case made sure that we were
25 staffing things appropriately and handling things

1 appropriately.

2 So, Your Honor, I think we've met the standards set forth
3 in the Bankruptcy Code and in the case law for approval of the
4 fees. And subject to any comments Your Honor may have, we
5 would ask that our fees be approved as requested.

6 THE COURT: All right.

7 MR. SCHWARTZ: If I may, Your Honor?

8 THE COURT: Go ahead.

9 MR. SCHWARTZ: Thank you. Sam Schwartz for NexPoint.

10 Your Honor, I would only ask that Mr. Pomerantz, since
11 we're not putting him on the stand, and I accept his proffer:
12 Just to be clear for the record, we did raise objections,
13 stating that there was not a 328 approval in this case. And
14 under 330(a)(3) and -- (a)(3)(B) and (a)(3)(F), some issues
15 about reasonableness. If just Mr. Pomerantz could be clear
16 with respect to his evidence that's been admitted at, I think,
17 Docket 3017, 3017, how his evidence plays to those factors, I
18 think that would be appropriate, Your Honor, just to round out
19 the record.

20 And with that, Your Honor, I think -- I know the Court is,
21 I think, overruling our objection, but from a record
22 perspective, I believe that's appropriate.

23 MR. POMERANTZ: Your Honor, in Paragraph 53 of our
24 application, it goes through the specific factors of the
25 *Johnson* decision and how each of those factors, we believe,

1 are met.

2 Mr. Schwartz -- and I'm not sure if his comments there
3 were alluding to the hourly rate issues -- I found his
4 objection or concern with the hourly rates objection to ring
5 particularly hollow, since it was his client, or, well, Mr.
6 Dondero, who we all know is effectively his client at NexPoint
7 Advisors, he was the one who hired us. And he was one who
8 hired other people as well.

9 So it was a particularly disingenuous argument to object
10 to the hourly rate. So I'm not sure if he was pointing to
11 that, but we've stated that we believe that the hourly rates
12 are commensurate for professionals handling this type of work.
13 There has been no evidence in opposition to that. And we
14 believe, again, Your Honor, with the statements I've made on
15 the record, with the recitation of the *Johnson* factors and the
16 application contained in our application -- in our --
17 Paragraph 53 of our application, that we've more than
18 satisfied the standard for the Court to have a sufficient
19 evidentiary basis to determine that the fees and expenses
20 requested are reasonable.

21 THE COURT: All right. Thank you.

22 Well, first off, I mean, I got a little confused by the
23 328 argument in the objection, but there was never any doubt
24 in my mind that the 330 standards would apply for this fee
25 app. And I guess -- well, I guess the argument boils down to

1 if you, I don't know, have a reference in the application, the
2 employment application, to 328, and you set forth what certain
3 professionals' billings rates are going to be, or ranges of
4 partners' billing rates, you know, is that set in stone? Is
5 it beyond the Court's ability to look at those as reasonable?

6 Anyway, I've analyzed this under a 330 standard. And I
7 just had one question about billing rates. If you have your
8 fee application handy, I did get confused about one thing on
9 Pages 2 and 3. Mr. Pomerantz, your billing rate is shown on
10 Page 2 as \$1,295 an hour, Mr. Morris's as \$1,245 an hour, but
11 then if you flip over to Page 3 there's a listing for you both
12 again, and it shows \$647 per hour for you, Mr. Pomerantz, and
13 \$622 per hour for Mr. Morris. I did not spot check everyone
14 on that list. Demo, I bet that's wrong, \$475.

15 MR. POMERANTZ: There's a good explanation for that,
16 Your Honor.

17 THE COURT: Okay.

18 MR. POMERANTZ: So, we followed the U.S. Trustee
19 guidelines in terms of travel time. We billed 50 percent.

20 THE COURT: Oh, okay.

21 MR. POMERANTZ: Have a category in our fee
22 applications of nonworking travel, and it shows up on the
23 charts as 50 percent. So that's why you're seeing it there.

24 THE COURT: Okay. Okay. I didn't see a reference,
25 on that particular page to it being related to travel, so

1 maybe I missed it. But that's where I got confused. Okay.

2 But looking through the big picture, the blended rates for
3 all attorneys at Pachulski were \$998 an hour. When you
4 consider other professionals, \$952 an hour.

5 Just one thing I thought through in my head: You know, if
6 you blended with the Hayward Law Firm, who was your local
7 counsel, I mean, it would come down significantly, because I
8 know that their blended rate was \$333 an hour. For all
9 professionals, \$359. And I think that's probably a reasonable
10 thing to do, to kind of blend the two firms.

11 But all in all, I noted there was some write-off of fees
12 per agreements with the U.S. Trustee and some write-off of
13 expenses was noted in, I think, footnotes in there.

14 Is there anyone out there who wanted to make any final
15 comment about Pachulski?

16 (No response.)

17 THE COURT: All right. Well, I am going to approve
18 the final request of \$23,978,627.25 in fees; \$334,232.95 in
19 expenses. Again, for the record, this is 22 months of work.
20 And I went through some of this a moment ago, but it, I guess,
21 started with -- the fees, the services, started with dealing
22 with an enormously-challenging corporate governance problem.
23 There was an immediate motion to change venue. There was a
24 corporate governance settlement reached with the Unsecured
25 Creditors' Committee which resulted in three new board members

1 and ultimately a new CEO, which no doubt that involved some --
2 having to educate new management.

3 We had a \$1 billion claim made by UBS. I forget the
4 number, \$70 million or more by Acis. Redeemer Committee,
5 close to \$300 million, I believe. HarbourVest, \$100 million.
6 Daugherty, I forget the number, but many tens of millions.
7 Those claims all had to be analyzed, and in some instances
8 they were mediated. They were generally settled.

9 The Debtor had a strong UCC to deal with, and I mean that
10 in a favorable way. Several plan drafts, I noted. And then,
11 as I mentioned, dealing with fairly regular objections to case
12 activity from Mr. Dondero and his related entities,
13 represented by 13 or 14 law firms over time, dealing with more
14 than a dozen appeals, motions for stay pending appeal. Most
15 recently, litigation to collect over \$50 million of notes,
16 what I would call jurisdictional ping pong over that between
17 the District Court and Bankruptcy Court. We have the DAF
18 litigation, we had complex document production protocols in
19 the case, and then litigation regarding Mr. Dondero's
20 interference with Mr. Seery's management over time.

21 So, again, as I said early on, high fees, but it isn't
22 surprising to me, given everything I have seen happen in the
23 case. So I approve all of these fees and expenses as
24 reasonable and necessary.

25 And with that, I want to roll into Hayward. I just

1 mentioned, as local counsel, their fees were \$825,629.50;
2 expenses, \$46,482.92. I don't know, Mr. Pomerantz or Ms.
3 Hayward, if you want to address that. As you might imagine, I
4 always look at local counsel fee apps with an eye towards, do
5 I think there's duplication of effort here? And I have to
6 say, I'm very pleased with this fee application. I think
7 there was a very reasonable approach between primary counsel
8 and local counsel. So who wants to address this one?

9 MR. ANNABLE: Your Honor, this is Zachery Annable.

10 THE COURT: Hello, Mr. Annable.

11 MR. ANNABLE: On behalf of Hayward, PLLC. Hello,
12 Your Honor. And Ms. Hayward is also appearing with me, but I
13 will take the laboring oar on this.

14 And as Your Honor noted, we are -- we tried to keep an
15 eye, of course, upon the local guidelines as far as
16 duplication of effort. I would point out to the Court, as
17 Your Honor has probably already seen, that primarily one
18 attorney, that being myself, did approximately 70 to 75
19 percent of the work as local counsel for Pachulski Stang,
20 local counsel for the Debtor, and working with Pachulski Stang
21 in order to get -- make sure pleadings, documents, everything
22 abided by the Local Rules.

23 As Your Honor knows, there's been -- there were a
24 substantial number of pleadings in this case leading up to the
25 effective date. I believe the notice of effective date was

1 Pleading No. 700 on the docket. So we did have substantial
2 work in this case. That's not including hundreds of separate
3 docket entries in various adversary proceedings, appeals
4 pending before the District Court and the Fifth Circuit Court
5 of Appeals, as well as standalone cases pending before the
6 United States District Court for the Northern District of
7 Texas.

8 Thus to say, Your Honor, we've all been quite busy, but we
9 were, of course, mindful of the requirements of not
10 duplicating effort. Any instances where we may have had two
11 attorneys working on something specifically for the Hayward
12 firm, it was because we were individually working on separate
13 aspects as local counsel in conjunction with Pachulski Stang.

14 As Your Honor knows, this has been a labor-intensive case,
15 and I think that if you look at our categorization of our
16 fees, the vast majority of our fees are spent in what we call
17 Adversary Proceedings, Litigation & Appeals. Had we not had
18 so much of the ancillary litigation as arose in this case, I
19 think the fees would have been -- well, everybody would have
20 been substantially less than what they are. But, you know, we
21 deal with the case we're presented, and we continue to do so.
22 But as Your Honor pointed out, our blended rate was just short
23 of \$334 an hour.

24 And early on in the case we did receive some informal
25 comments from the United States Trustee's office. Obviously,

1 we wanted to do things the way Ms. Lambert and her office
2 asked that we do them, and from there on out we received no
3 more comments. We did reduce our fees, I think \$360 in
4 connection with requests by Ms. Lambert. But other than that,
5 I would proffer as my testimony on what I said here and what
6 Mr. Pomerantz has said, I would offer into evidence as my
7 proffer the fee application itself, which has already been
8 admitted. I prepared the fee application, and it contains my
9 certification that this is compliant with the local guidelines
10 for the Northern District of Texas.

11 And so unless Your Honor has any other questions, that
12 will conclude my presentation at this point.

13 THE COURT: All right.

14 MR. POMERANTZ: Your Honor, I'd just like to --

15 THE COURT: Go ahead.

16 MR. POMERANTZ: I'd just like to make a couple of
17 comments.

18 So, I didn't know Mr. Annable before this matter. And
19 this was a significant matter. Whenever you go into a matter
20 and have a new relationship, you're always a little sort of
21 concerned. I could not be happier with the service that I got
22 from Mr. Annable. Melissa Hayward also. When she worked on
23 it, she did a good job. But Mr. Annable did 80 percent of the
24 work.

25 One of the drawbacks from somebody in Texas working with

1 lead counsel in California is that we're two hours behind. So
2 there were many, many times that Mr. Annable, whether it was
3 on a Friday night, whether it was during the week, whether it
4 was on the weekend, at great personal sacrifice, but, you
5 know, he was fantastic. And our ability to provide the
6 service we did could not have occurred if we didn't have the
7 type of service that he provided for two years.

8 THE COURT: All right. That's nice to hear.

9 MR. ANNABLE: And I'm going to blush.

10 THE COURT: Go ahead.

11 MR. ANNABLE: I'm going to blush, Your Honor, but I
12 appreciate Mr. Pomerantz's comments. And, again, so that's
13 going to make me blush, but I do appreciate it. And I guess
14 good for him that I'm a night owl, so there's no problem
15 staying up for the requirements that this case had.

16 THE COURT: Okay. Anyone else wish to be heard on
17 this?

18 MR. SCHWARTZ: Sam Schwartz on behalf of NexPoint,
19 Your Honor. I just would simply further my request that, with
20 the remaining professionals' final applications, that we just
21 are clear with the record which parts of the evidence apply to
22 the Section 330 analysis.

23 Outside of that, Your Honor, no further comment.

24 THE COURT: All right. Well, as I noted earlier, I
25 have applied a 330 analysis. It didn't occur to me to do

1 otherwise on these lawyer professionals.

2 So, again, I will reiterate that this was, I feel like, a
3 very good primary counsel/local counsel dynamic. I didn't see
4 duplication of effort, which sometimes we unfortunately see.
5 So I approve all of these as reasonable and necessary under
6 330. So I am approving \$825,629.50 in fees and \$46,482.92 in
7 expenses.

8 All right. Well, we have one more Debtor professional to
9 address, and that is Wilmer Cutler. So who will be presenting
10 that one?

11 MR. SILVA: Good morning, Your Honor. This is Tim
12 Silva from Wilmer Cutler Pickering Hale and Dorr. My
13 colleague, Ben Loveland, is also on the call. He is a
14 bankruptcy expert who helped with the technical aspects of the
15 fee application filings. My role, I'm an investment
16 management partner at Wilmer Cutler Pickering Hale and Dorr,
17 and our firm, as noted in our fee application, our firm
18 provided a number of different specialized areas of expertise
19 for this matter, focused, among other things, on securities
20 law expertise as well as other areas of expertise that aren't
21 core to the other service providers, such as tax, ERISA,
22 employment, and securities enforcement.

23 We were, you know, as outlined in our fee application, we
24 were involved significantly in the matter beginning in late
25 2019, and, you know, were involved in many aspects of the

1 matter, providing those specialized areas of expertise.

2 I'm happy to answer any questions the Court has for us.

3 THE COURT: All right. I did have a question, and
4 I'm trying to find -- oh, here's the tab.

5 First, I'm looking at Page 11, Compensation by Project
6 Category, and I first wanted to ask about the reduction. Do I
7 understand that your request contains a voluntary reduction of
8 \$239,941?

9 MR. SILVA: We -- that's correct. We did apply -- we
10 applied a ten percent discount to our rates.

11 THE COURT: Okay. So it's --

12 MR. SILVA: That's -- I believe that's what's
13 reflected in that reduction.

14 THE COURT: It was just a blanket across-the-board
15 ten percent discount?

16 MR. SILVA: Correct.

17 THE COURT: Okay. My next question, on that same
18 page. Bankruptcy-Related Advice, \$416,675, and then General
19 Bankruptcy Advice/Opinions, \$272,331. It was a little hard
20 for me to understand and decipher whether this was duplicative
21 of Pachulski, so explain those two categories and why it was
22 not duplicative of main bankruptcy counsel.

23 MR. SILVA: So, let me try, let me try to answer
24 that. And my colleague Ben may have a view as well. But we
25 -- part of our role required that we draw from bankruptcy

1 resources and expertise in order to deliver advice relating to
2 some of the transactional securities law aspects of the deal
3 because of the nature of the kinds of entities and instruments
4 that Highland, the Debtor, was engaged in and invests in.

5 There was -- I don't have the bankruptcy expertise to be
6 able to analyze and assess, nor did my sort of corporate or
7 tax partners have that expertise, so we needed -- we needed to
8 draw upon the resources in some cases of our colleagues to be
9 able to engage in that, and I --

10 MR. LOVELAND: Yeah. This is Ben Loveland from
11 Wilmer Hale as well.

12 THE COURT: Okay.

13 MR. LOVELAND: I think there are really two
14 responses, Your Honor, to this question. I'm looking at Pages
15 10 and 11 at the bottom of our fee applications, which I guess
16 is, you know, ECF Pages 22 and 23.

17 THE COURT: Okay.

18 MR. LOVELAND: And it looks like the way that the
19 task codes applied here, you know, they weren't more specific
20 task codes for the type of work that Mr. Silva and his team
21 provided in terms of, you know, employment matters, fund
22 matters, regulatory matters. And so reading these
23 descriptions in Paragraphs 49 through 52 of the fee
24 application, it appears to me that, although they're sort of
25 categorized under Bankruptcy Advice and Opinions, by and large

1 they were -- while they were performed within the, you know,
2 context of the bankruptcy case, they were (audio glitch)
3 squarely bankruptcy-related work (audio glitch), that the only
4 bankruptcy-related, true bankruptcy-related work that we did
5 here, and I can say this because that's the only portion of
6 this case where I was directly involved, was actually the exit
7 financing.

8 THE COURT: Okay.

9 MR. SILVA: And in that regard, Wilmer Hale did the
10 transactional aspects and worked closely with the Pachulski
11 firm, who handled, you know, the motion papers and the
12 hearings and the in-court and sort of true bankruptcy aspects
13 of that, while we handled purely the finance and transactional
14 side of that work.

15 THE COURT: Okay.

16 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
17 If I could just add to what was just said?

18 THE COURT: Okay.

19 MR. POMERANTZ: So, look, I led the engagement, and I
20 have a pretty good sense of what all professionals are doing.
21 I've known the Wilmer Hale folks for decades. They're
22 tremendous bankruptcy lawyers. I've worked across them, on
23 the same side of them. I can honestly say that I don't think
24 my colleagues on the bankruptcy side dealt with their
25 colleagues on the bankruptcy side at all.

1 I have not looked at the application, I did not see what
2 Your Honor mentioned, but I would be very shocked and
3 surprised if -- other than -- than there was anyone else of
4 any material amount just on the bankruptcy side, because we
5 just did not use them for that.

6 Having said that, you know, we had a plan and disclosure
7 statement. They were vital to that. We had exit financing.
8 They were vital to that. We had several contested matters
9 that were in the bankruptcy case that we relied heavily on for
10 advice. We basically had adversary proceedings regarding
11 HarbourVest, which we relied on that.

12 So, again, I have not reviewed the application, but I feel
13 confident in saying that we did not work in any material
14 amount with the Wilmer bankruptcy folks and that any -- any
15 billing in that category was, as mentioned, just because other
16 categories did not seem to fit.

17 THE COURT: Okay. And I had forgotten that they were
18 involved significantly with the exit financing issues. So you
19 confirm that, Mr. Pomerantz?

20 MR. POMERANTZ: Yes.

21 THE COURT: Okay.

22 MR. POMERANTZ: They did it primarily. I mean, we
23 did not. Mr. Demo was involved to some extent, because,
24 again, other than me, he was involved in every aspect, but
25 more of an oversight basis. And we did not do the

1 documentation, negotiation, or the heavy lifting on the exit
2 financing, and Wilmer did a great job and allowed it to be
3 documented in the appropriate time.

4 THE COURT: Okay. And Wilmer, have they been
5 involved historically as securities law counsel for the
6 Highland companies?

7 MR. POMERANTZ: Your Honor, they were.

8 THE COURT: Okay.

9 MR. POMERANTZ: And, you know, as I recently
10 mentioned to Mr. Silva in another context, when we came into
11 the case and when the board came in, I think the board had to
12 decide, you know, what people that it had the confidence in
13 and that it could trust going forward, given the quite
14 significant conflicts of interest that Your Honor has alluded
15 to and have plagued this case and plagued it pre-bankruptcy
16 time.

17 It didn't take the Pachulski firm long and I believe it
18 didn't take the board long, and Mr. Seery would testify and
19 say the same, that pretty soon we found that Mr. Silva and his
20 team were going to be vital to this case and that we could
21 trust them implicitly. And they proved that over and over
22 throughout the case, and we did not have any concerns at any
23 time in the case that we weren't getting their advice as a
24 bankruptcy professional that was the best for this estate.

25 So while they did have the historical connection, we soon

1 concluded, and they demonstrated, that that was not an issue
2 because of the type of professionals they are.

3 THE COURT: Okay. Thank you.

4 My last question, and this is partly just to educate
5 myself generally, not just with respect to this case or this
6 fee application: The billing rates, I will tell you that
7 while I am certainly well aware that billing rates have crept
8 up to the \$1,200, \$1,300, \$1,500 level, I've never before seen
9 \$1,910 an hour, and that was the billing rate of Philip Anker.

10 Now, I note he hardly billed anything to the case, but
11 tell me, educate me about rates. Is this sort of the new
12 market rate for a certain level of professional? And tell me
13 about Mr. Anker. Perhaps I should know him, but I don't think
14 I've had him in this court. Mr. Silva?

15 MR. SILVA: Yes, Your Honor. Mr. Anker is a very
16 senior (inaudible) bankruptcy-focused partner at our firm.
17 And I think what I would -- you know, I agree with Your Honor
18 that the rate scales have substantially increased, but I think
19 you would find that, for the most senior folks at a firm of
20 this size and scale law firm, that that rate structure is not
21 unusual. So it's consistent, I think, with what our peers are
22 charging. And frankly, in some cases, there are folks at
23 firms like ours and others who are present here that are
24 higher than that.

25 MR. POMERANTZ: Your Honor, to address that from my

1 vantage point.

2 THE COURT: Okay.

3 MR. POMERANTZ: We are involved in some of the
4 largest cases around the country, many that are in Fifth
5 Circuit, many that are in New York and Delaware, and we can --
6 I can say that that is not shocking and surprising to me.
7 Perhaps more shocking and surprising is the rates of first-
8 and second-year lawyers, but I digress.

9 I'd just say it -- I think it helps our firm because it
10 makes our rates look as reasonable as they are. But it has
11 been a rate creep substantially in the three decades I've
12 practiced, but that is unfortunately what the market is for
13 the top professionals. And there's a lot of very talented
14 professionals. Mr. Anker is a very talented professional.
15 And he didn't spend much time in this case, but it is -- it is
16 where we are.

17 THE COURT: Okay. All right. Anyone else wish to
18 weigh in on the Wilmer fee app?

19 MS. LAMBERT: Judge Jernigan?

20 MR. SCHWARTZ: Sam Schwartz, Your Honor, -- oh.
21 Please.

22 MS. LAMBERT: This is Lisa Lambert for the United
23 Stated Trustee.

24 THE COURT: Okay.

25 MS. LAMBERT: My familiarity with Mr. Anker goes back

1 to the *MCorp* case, --

2 THE COURT: Oh, my.

3 MS. LAMBERT: -- where he was very bright and he was
4 very actively involved in that case and also did appellate
5 work in that case. So, and I've dealt with him in other cases
6 when I was in New York as well. And so he is a senior-level
7 professional and has addressed some very novel legal issues.
8 In this particular case, I did consider objecting to his fees
9 as transitory, but then I considered that his role was
10 probably, in some respects, as translator between securities
11 law and bankruptcy law, and he does do a lot of regulatory
12 work, as reflected -- he was doing work for the FDIC, as
13 reflected by this.

14 And so, for that reason, I did not object to it as
15 transitory, and the fees, while high, and I might reserve the
16 right to raise that in another case, I didn't object to under
17 the facts of this case.

18 THE COURT: All right. I appreciate hearing that,
19 and -- well, again, I haven't had a case with him, but he
20 certainly seems well regarded by all.

21 All right. Mr. Schwartz, you wanted to say something?

22 MR. SCHWARTZ: Thank you, Your Honor. Sam Schwartz.
23 Simply, Your Honor, I'll say it a last time, just to --
24 because we had an omnibus objection. We just want to make
25 sure the evidentiary record is clear with respect to 330,

1 which I think the Court is going to discuss next. So, with
2 that, Your Honor, absent any other issues, I'll leave that
3 omnibus objection out there with respect to the balance of the
4 applications and put myself on mute unless an issue arises.

5 THE COURT: Thank you.

6 All right. Well, if there's nothing else, I am going to
7 approve all of these fees and expenses sought by Wilmer Cutler
8 as reasonable and necessary under the 330 standards.

9 I want to emphasize that I do consider it significant that
10 there was a ten percent across-the-board reduction here. That
11 is nothing to sneeze at. So I think any bit of concern I may
12 have had over these bankruptcy-related categories is certainly
13 offset by that voluntary reduction.

14 And I want to also emphasize, with regard to my question
15 about billing rates, I am mostly just trying to stay educated
16 about the market, and I didn't mean to pick on Mr. Anker. I
17 just had not seen that billing rate yet. But, again, very
18 little time was billed to the matter. And I know that it is a
19 very normal thing in large practices to have a few absolute
20 experts who can command a very high billing rate that the
21 market is willing to pay, and I'm convinced that's what we
22 have in this situation.

23 And it's the reason I tend to focus on blended rates.
24 People have probably heard me say that many times. I tend to
25 focus on blended rates much more than any particular

1 timekeeper's rate. So, certainly, the blended rate wasn't
2 anywhere close to \$1,900 here.

3 All right. So I approve all of those fees and expenses,
4 and the Wilmer Cutler people are free to drop off the line if
5 they so choose.

6 All right. I think we are now down to the three Committee
7 professionals. So, Mr. Clemente, I'll hear from you now.

8 MR. CLEMENTE: Yes. Good afternoon, Your Honor.
9 Matt Clemente.

10 Your Honor, as I mentioned in my remarks, the three fee
11 applications that are before you, it's the 21st monthly and
12 final fee application of Sidley Austin, which is Docket 2904,
13 seeking final allowance of fees in the amount of
14 \$13,134,805.20 and expenses in the amount of \$211,841.25.

15 With respect to FTI, Your Honor, it is the 21st monthly
16 and final fee application, which is Docket 2902, requesting
17 final fees in the amount of \$6,176,551.20 and expenses in the
18 amount of \$39,122.91.

19 Finally, Your Honor, it's Teneo, the litigation advisor to
20 the Committee, their second monthly and final fee application,
21 which is Docket No. 2903, requesting final allowance of fees
22 in the amount of \$1,358,565.52 and expenses in the amount of
23 \$6,257.07.

24 Your Honor, as we mentioned and as you reiterated, the
25 case has been complex. There have been many different twists

1 and turns and hard-fought battles throughout the case, Your
2 Honor. And from the perspective of Sidley, as Mr. Pomerantz
3 alluded to, the professionals, despite many arguments that
4 were brought in front of Your Honor, the Committee
5 professionals and the Debtor professionals worked remarkably
6 well during in this case, ultimately pushing over the goal
7 line, you know, the confirmed plan that Your Honor approved.

8 Secondly, Your Honor, as I mentioned before, each of the
9 Committee professionals has taken a ten-percent discount on
10 their fees. Your Honor's question may have -- regarding that
11 may have come from the fact that it's presented a little bit
12 differently. It's clear from the face of the Sidley fee
13 application the ten percent. Teneo, it was referenced in
14 their retention papers. And FTI, for, you know, frankly,
15 propriety reasons, didn't do it that way, but Your Honor, I
16 negotiated that with them, so I can represent to you that, in
17 fact, that was the fee arrangement with them. So I wanted to
18 make that clear for Your Honor.

19 And then the final point that I would make, Your Honor, is
20 that fees, as I've mentioned before in the various times we've
21 been in front of you, were front and center to my Committee,
22 as evidenced by the fact that they negotiated the ten-percent
23 discount with their professionals.

24 We looked very closely at the fees of the Debtor, how they
25 were being expended. As Your Honor knows, we had issues with

1 certain of the retentions that were -- that were up and things
2 of that nature, Your Honor.

3 So, from the perspective of the overall fees in the case,
4 the Committee was very focused on that, but they also did
5 understand that it was a very unique case with a lot of
6 complex issues -- frankly, issues you don't see in a lot of
7 cases, given the nature of the Debtor as an investment manager
8 and investment advisor.

9 So, Your Honor, the fees were very, very -- one thing that
10 was very much front and center with the Committee, and,
11 frankly, is the reason why the Committee took the tack that it
12 did in terms of trying to hold off on doing the full-blown
13 litigation investigation, bringing in a litigation advisor, in
14 order to do that through the Litigation Trust.

15 Your Honor, with respect to FTI and Teneo, I think if Your
16 Honor would recall, FTI was the original financial advisor for
17 the Committee from the beginning of the case. As the case was
18 brought towards its conclusion and there was going to be a
19 transition into a litigation trust, Teneo was brought in to do
20 the work for the Litigation Trustee.

21 So, while there was a transition period, Your Honor, given
22 that FTI had done work throughout the case and then FTI [sic]
23 came in, their roles were separate, Your Honor. It wasn't as
24 if FTI and Teneo were both doing the same things. They were
25 brought -- Teneo was brought in to transition into the role of

1 Mark Kirschner as the Litigation Trustee. So I also wanted to
2 point that out to Your Honor.

3 With that, Your Honor, I'm happy to answer questions about
4 the Sidley retention or Sidley fee application. And, as I
5 mentioned, there's representatives of FTI and Teneo on the
6 phone if you have any questions. They're not lawyers, Your
7 Honor, they're businesspeople, but I'm sure if you had
8 questions for them they would be more than happy to be able to
9 answer them for you.

10 THE COURT: All right. I don't think I had any
11 questions on these. I will note I did get, at some point
12 yesterday afternoon, the unredacted time entries for Teneo, so
13 I did have the benefit of seeing those.

14 Who wants to speak to this? Mr. Pomerantz, I'll start
15 with you. Anything you want to say on the record?

16 MR. POMERANTZ: No, just to reiterate the comments I
17 made before, Your Honor. I think it was -- it was good and
18 important to bring Teneo in. As Your Honor knows, as Mr.
19 Schwartz mentioned, there was a complaint filed. They were up
20 against a two-year statute. They were brought in. And,
21 again, from our vantage point, although we weren't on the
22 Committee side, we saw a decrease in FTI activity and an
23 increase in Teneo activity as they came in.

24 So we were supportive, we're supportive. And, again, as I
25 mentioned with respect to Sidley and FTI, it was -- even

1 though it was an adversarial relationship the first couple
2 months of the case, I think after we got the corporate
3 governance and worked through some issues, we worked very well
4 together. And we have no opposition to their fees and support
5 their fees.

6 THE COURT: All right. Anyone on the line want to
7 weigh in on any of these Committee professionals?

8 (No response.)

9 THE COURT: All right. Well, I was kind of talking
10 about the secret sauce of the Court's review of both interim
11 and final fee apps earlier. I guess one thing I should add,
12 just for parties' benefit, is, in a large, complex Chapter 11,
13 I very much kind of do comparisons to where the Committee's
14 professionals' fees are tracking to the Debtor's
15 professionals' fees. And I've kind of come up with rules of
16 thumb over the years. And, again, the secret sauce, this rule
17 of thumb, which is not very scientific at all, is, in a normal
18 case -- and this is anything but normal, Highland -- if the
19 Committee professionals' fees are more than a third of what
20 the Debtor's professional fees are, that just tends to be one
21 of my red flags, that I start drilling down and see if there's
22 a good reason for this.

23 But, again, this case is anything but normal. And what I
24 mean is that we had a very active, strong Committee, and I
25 mean that in a complimentary way. It had to be in this case.

1 And the Committee negotiated this corporate governance
2 protocol early on in the case that, among other things, gave
3 the Committee standing to pursue claims and causes of action
4 and gave the Committee basically this monitoring role. And,
5 again, it was a very important part of how this case went
6 forward, because of concerns over conflicts of interest.

7 So, here, I would not have expected the one-third
8 unscientific rule to be appropriate. And in that regard, I
9 would note that, what, total fees, \$13,134 for Sidley versus,
10 what was the final number, \$23,978 and change for Pachulski.
11 Again, it is a different balance than we sometimes want to
12 see, but here there was very good reason. We determined as of
13 January 2020, early in the case, that the Committee was going
14 to have this special heightened role in this case to make us
15 feel good about the Chapter 11 process.

16 So, appreciating the ten-percent discount that was
17 negotiated from the beginning, I am approving all of these
18 fees and expenses of Sidley, \$13,134,805.20, fees; expenses,
19 \$211,841.25. FTI, \$6,176,551.20 in fees; expenses,
20 \$39,122.91.

21 I'm going to mention, Sidley's blended rate, \$853.01 an
22 hour. FTI, \$657.36 an hour. And I'm guessing that's once --
23 I didn't double-check the math. That's probably with the ten-
24 percent discount factored in, but maybe not.

25 MR. SILVA: I believe that is correct, Your Honor.

1 THE COURT: Yeah. And then Teneo. Of course, they
2 came in late, to kind of be involved in the hybrid period, if
3 you will, between confirmation and effective date. I'm
4 approving their total fees of \$1,221,468.75. I think their
5 expenses were only six million five -- no, six million two
6 fifty-seven point oh-seven. Again, applying a 330 standard to
7 all of this, I approve this.

8 Now, actually, there was a separate fee of Kirschner.
9 Right?

10 MR. CLEMENTE: Correct, Your Honor. And that's --

11 THE COURT: \$137,096.77. He was kind of in a
12 different category here before he was Litigation Trustee. I
13 forget what we called him. But it was necessary to get him
14 involved before --

15 MR. CLEMENTE: Correct.

16 THE COURT: Okay. So I approve that all.

17 MR. CLEMENTE: He was litigation advisor to the
18 Committee. That's correct, Your Honor.

19 THE COURT: I approve that all as reasonable and
20 necessary.

21 And what was I going to add just now? I thought I was
22 going to add -- you know, something that is noteworthy, I
23 can't remember if I said this. No, this was in another large,
24 complex Chapter 11 final fee app hearing recently. The
25 expenses. It's kind of interesting thinking about what the

1 expenses may have been in this case if not for COVID and
2 everything being virtual. So, you know, while the number, the
3 overall aggravate number of close to \$50 million may give some
4 folks pause, a high number, wonder what number of expenses
5 were saved here. Wonder how many millions of expenses we
6 would have had from travel, hotels, extra hours on the road.
7 You know, that's just kind of an interesting thing to think
8 about, especially as we move forward post-pandemic. You know,
9 what are we going to do virtually versus in person in these
10 large Chapter 11s?

11 All right. So I'll look for a bunch of orders to be
12 uploaded.

13 Is there anything else anyone wanted to address?

14 MR. CLEMENTE: Your Honor, it's Matt Clemente again.
15 I actually have one procedural issue. We did not file a
16 pretrial list, Your Honor, but we obviously have the final fee
17 applications that would support the orders that you just
18 entered, Your Honor. And so I wanted to ensure that those
19 would be part of the record to the extent Mr. Schwartz is, you
20 know, going to take this up on appeal. I don't know what his
21 intention would be. They've obviously all been filed on the
22 docket, Your Honor, but I wanted to ensure that the final fee
23 applications as well as the interim and quarterly fee
24 applications were part of the record that supported Your
25 Honor's ruling with respect to the Committee professionals.

1 THE COURT: All right. Well, certainly, I will take
2 judicial notice of those and consider --

3 MR. CLEMENTE: Thank you, Your Honor.

4 THE COURT: -- them as part of -- I considered that
5 all as part of my preparation and consideration of these fee
6 apps. I think I remembered seeing proposed forms of order
7 attached to every fee app submitted. So I accept --

8 MR. CLEMENTE: That's correct.

9 THE COURT: -- that request.

10 MR. CLEMENTE: Thank you, Your Honor.

11 THE COURT: All right. Anything else?

12 I do have a question for Mr. Pomerantz, if there's nothing
13 else.

14 MR. POMERANTZ: Yes, Your Honor?

15 THE COURT: So, unrelated, the other day I gave a
16 bench ruling through Ms. Ellison on the arbitration question,
17 as well as there were 12(b)(6) motions and motions to stay in
18 the various note adversary proceedings. We noticed after the
19 fact that Mr. Kroop was not copied on that email, so I'm sure,
20 since several other people at Pachulski got that, he was
21 forwarded the Court's bench ruling. So are you all hard at
22 work on the actual formal memorandum decision and order?

23 MR. POMERANTZ: Yes, Your Honor. And after Mr. Kroop
24 files an appellate brief today, that is his next job. So we
25 will have it to Your Honor shortly, where, in light of Your

1 Honor's comments, we want to make sure that the -- to the
2 extent we need detailed findings of fact and conclusions of
3 law on the motion to dismiss, that they are appropriate. So
4 we're looking into that as well, but we are working on it and
5 hope to have orders to Your Honor shortly. And, as we've done
6 in the case, we will let Ms. Ellison know when we have
7 uploaded the orders.

8 THE COURT: Okay. Thank you. All right.

9 (Proceedings concluded at 11:25 a.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

11/18/2021

23

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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