

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

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In Re:	)	<b>Case No. 19-34054-sgj-11</b>
	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	March 1, 2022
	)	1:30 p.m. Docket
Reorganized Debtor.	)	
	)	- REORGANIZED DEBTOR'S MOTION
	)	FOR ENTRY OF AN ORDER
	)	APPROVING SETTLEMENT WITH
	)	PATRICK DAUGHERTY [3088]
	)	- REORGANIZED DEBTOR'S MOTION
	)	FOR ENTRY OF AN ORDER
	)	FURTHER EXTENDING THE PERIOD
	)	WITHIN WHICH IT MAY REMOVE
	)	ACTIONS [3199]
	)	
_____	)	
ELLINGTON,	)	<b>Adversary Proceeding 22-3003-sgj</b>
	)	
Plaintiff,	)	
	)	STATUS CONFERENCE
v.	)	(NOTICE OF REMOVAL)
	)	
DAUGHERTY,	)	
	)	
Defendant.	)	
_____	)	

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

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APPEARANCES:

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1 DALLAS, TEXAS - MARCH 1, 2022 - 1:33 P.M.

2 THE COURT: All right. We have settings in Highland.  
3 We have a motion to approve a settlement with Patrick  
4 Daugherty. We also had a status conference in a recently-  
5 removed adversary or state court action, but I'm not sure  
6 we're going to accomplish much on that one since there's a  
7 motion for remand that's set later in the month.

8 So let's start with the Highland Motion to Approve  
9 Compromise with Mr. Daugherty. And I'll get appearances. Who  
10 do we have appearing for the Reorganized Debtor?

11 MR. MORRIS: Good afternoon, Your Honor. It's John  
12 Morris from Pachulski Stang Ziehl & Jones for the Reorganized  
13 Debtor.

14 THE COURT: All right. Thank you. For Mr.  
15 Daugherty, do we have a lawyer appearance?

16 MR. UEBLER: Good afternoon, Your Honor. This is Tom  
17 Uebler on behalf of Patrick Daugherty. And Mr. Daugherty is  
18 also attending today.

19 THE COURT: All right. Thank you. That's U-E-B-L-E-  
20 R, correct?

21 MR. UEBLER: Yes.

22 THE COURT: Okay. All right. We have an objection  
23 from Scott Ellington, and we're going to talk about the  
24 standing, but who do we have appearing for Scott Ellington?

25 MS. DANDENEAU: Good afternoon, Your Honor. This is

1 Debra Dandeneau from Baker & McKenzie. I'm appearing here on  
2 behalf of Scott Ellington.

3 THE COURT: Okay. Do we have any other lawyer  
4 appearances before we get started?

5 (No response.)

6 THE COURT: All right. Well, I don't mean to steal  
7 your thunder, Mr. Morris, on how we proceed here today. As  
8 I've already alluded to, I have a standing concern right off  
9 the bat. But how did you want to proceed, Mr. Morris, before  
10 we address that?

11 MR. MORRIS: Before we address that, my intention was  
12 to make an opening statement, move my exhibits into evidence,  
13 put Mr. Seery on the stand in order to adduce evidence that we  
14 believe establishes the grounds for granting the 9019 motion,  
15 and then turning it over to Ms. Dandeneau.

16 THE COURT: All right. Well, obviously, I need to  
17 hear evidence and have a prove-up, whether we have a pending  
18 objection or not. So I'll let you go forward in that manner,  
19 and then we'll talk to Ms. Dandeneau about the standing of her  
20 client to pursue to the objection and see where we go from  
21 there. All right?

22 MR. MORRIS: All right. And I will mention the  
23 standing issue as part of my presentation. But we thought it  
24 was important, you know, the Reorganized Debtor's position, as  
25 stated in the papers, is that we don't believe that Mr.

1 Ellington has standing, but even if the Court found that he  
2 did, there is no basis to sustain the objection. So we're  
3 kind of prepared to proceed on that basis.

4 As Your Honor knows, the issue of standing has come up so  
5 many times in this case. The Court has observed countless  
6 times the tenuous nature of various individuals and entities  
7 who were pursuing various relief in this Court. And  
8 notwithstanding the tenuous nature, which, you know,  
9 respectfully, we didn't think it existed in certain  
10 circumstances, we've always gone to the merits. And so I'd  
11 like to tackle both issues today in case there is an appeal,  
12 in case, you know, we just want to -- we just want to button  
13 down the hatches and try to get done with Mr. Daugherty and  
14 notch another hole in our belt, so to speak.

15 So if I may, Your Honor, I'd like to proceed.

16 THE COURT: You may.

17 OPENING STATEMENT ON BEHALF OF THE DEBTOR

18 MR. MORRIS: Okay. So, as Your Honor pointed out,  
19 we're here on a 9019 motion. The Debtor seeks the Court's  
20 authority to consummate a proposed settlement that it has  
21 negotiated with Mr. Daugherty. As the Court has also  
22 observed, there's only one limited objection on file, the one  
23 by Mr. Ellington.

24 As Your Honor may recall, just about a year ago, maybe a  
25 little bit more than a year ago, actually, at confirmation, we

1 had announced a settlement in principle with Mr. Daugherty.  
2 And it's taken some time to get to this point, and I'll  
3 describe some of the reasons for that, and Mr. Seery will  
4 certainly testify as to those issues.

5 But before I get into kind of the substance, I would like  
6 to just move into evidence the documents that are listed on  
7 the Reorganized Debtor's witness and exhibit list that can be  
8 found at Docket No. 3270. It's really a very modest set of  
9 exhibits, in contrast to some of the other hearings that we've  
10 had. It is the 3018 order that Your Honor may recall entering  
11 about a year and a half ago. It is the settlement agreement  
12 itself, which is attached to my declaration so that it would  
13 be admissible for evidentiary purposes. And it's the three  
14 proofs of claim that Mr. Daugherty filed initially: Claim 67,  
15 which was amended by 77, which was amended by 205.

16 So we'd move for the admission of those documents into  
17 evidence.

18 THE COURT: All right. I presume no one has an  
19 objection to that. Okay.

20 MS. DANDENEAU: That's correct, Your Honor. We don't  
21 -- we don't object.

22 THE COURT: Okay.

23 (Debtor's exhibits identified in Docket 3270 are received  
24 into evidence.)

25 MR. MORRIS: Okay. So, with that, we do intend to

1 call Mr. Seery. Mr. Seery is going to testify, you know, to  
2 his understanding of the nature of Mr. Daugherty's claims.  
3 He'll testify to the -- to some of the litigation. We're not  
4 going to go on at length here, but we do want to make a  
5 record.

6 He'll testify as to the litigation that took place in this  
7 Court, because it really was very important in establishing  
8 some of the strengths and weaknesses of the case. It was  
9 important because we actually received Your Honor's opinion,  
10 at least with respect to voting purposes. And we all  
11 acknowledge that that was for that limited purpose at that  
12 time.

13 He'll describe the negotiations, the participation of the  
14 Independent Board, the reasons why it took a little bit longer  
15 to get here than we had hoped a year ago.

16 And so he will -- he will give you the evidence that I  
17 hope the Court finds is sufficient to approve this settlement.

18 He'll also address the two issues raised by Mr. Ellington,  
19 the observer access issue as well as the transfer of HERA and  
20 ERA under the proposed settlement.

21 I just want to make sure the record is clear as to what  
22 claim is being compromised here and the status of the other  
23 claims. Mr. Daugherty -- and this is all laid out in the  
24 settlement agreement, so I don't think that I'm saying  
25 anything controversial here. But as set forth in the

1 settlement agreement, back in April of 2020 Mr. Daugherty  
2 filed his original proof of claim. That was denoted as Claim  
3 No. 67. A couple of weeks later, or maybe a week later, his  
4 claim was -- he amended his claim and superseded his claim.  
5 So Claim 67 is no longer an operable claim, and that was  
6 superseded by Claim No. 77. And then in the fall he made a  
7 motion for leave to further amend his claim. After a hearing,  
8 that motion was granted and Mr. Daugherty filed another  
9 superseding claim. This one was denoted as Claim No. 205, in  
10 the approximate amount of \$40 million.

11 So Claim 205 is the operative claim here. The other two  
12 claims will be expunged as part of the order because they've  
13 been superseded. And that's, that's what we're here to  
14 compromise today.

15 Mr. Seery is going to testify that he and the independent  
16 directors, really early on in the case, familiarized  
17 themselves with Mr. Daugherty. You know, they communicated  
18 with him and introduced themselves to him. The evidence will  
19 show that there's -- there's just a really voluminous record  
20 that preceded the Highland bankruptcy filing. Mr. Seery is  
21 going to testify that, you know, he's somewhat familiar with  
22 that record, that his lawyers became very familiar with that  
23 record, and on the basis of that review he and the independent  
24 directors really began to understand kind of the nature of Mr.  
25 Daugherty's claims.

1           The attachments to the proof of claim, Your Honor, as you  
2 may recall from the 3018 hearing, are enormous. And they're  
3 enormous for good reason. For probably seven or eight years  
4 before I ever heard of Highland Capital, Mr. Daugherty and Mr.  
5 Dondero and Highland and Mr. Ellington were engaged in very  
6 lengthy, acrimonious litigation. The litigation started in  
7 Texas state court. You know, this is a story that's been told  
8 many times. It started in state court. There were claims.  
9 There were counterclaims. I think at the end of it Highland  
10 had a \$2.8 million verdict against Mr. Daugherty and Mr.  
11 Daugherty had a \$2.6 million verdict against Highland. And I  
12 think in a rational world, Your Honor, Mr. Daugherty would  
13 have paid Highland \$200,000, everybody would have said we've  
14 taken our best shot, and people would have gone on with their  
15 lives.

16           Regrettably, as so much happened, you know, with Highland  
17 prepetition, that was not the case. And it wasn't even close,  
18 right? During that whole litigation, you had -- you had  
19 criminal contempt. You had appeals. And then Mr. Daugherty,  
20 you know, made good on his judgment and he actually paid his  
21 judgment to Highland, but Highland didn't return the favor.  
22 Didn't comply, frankly, with their legal obligation.

23           And so Mr. Daugherty took the litigation from Texas up to  
24 Delaware. He sued Highland. He sued HERA. He sued Mr.  
25 Dondero. And he was seeking not only to collect on his

1 judgment but he was also seeking to collect on assets that had  
2 been held on his behalf within HERA, which was, you know, a  
3 form of deferred compensation program that was established  
4 following the financial crisis in order to retain employees.

5 And during the course of that litigation -- again, this is  
6 all documented in the proof of claim -- Mr. Seery can testify  
7 not on the basis of personal knowledge but on the basis of his  
8 review, the advice that he's received, and the litigation that  
9 we've had before Your Honor -- I think the record is pretty  
10 clear that Mr. Daugherty then learned that Highland had not  
11 only stripped HERA of its assets but had, you know, engaged in  
12 other wrongful conduct, including taking the money that was in  
13 an escrow account that the Texas state court, I understand,  
14 was specifically told was earmarked for the benefit of Mr.  
15 Daugherty. They took that, too.

16 And so, you know, Mr. Daugherty continued to pursue his  
17 litigation. Before the petition date, the Delaware Chancery  
18 Court found that there was a likelihood of a fraud. They  
19 found an exception to the attorney-client privilege under the  
20 crime-fraud exception. And, again, all of this happened  
21 before Jim Seery, the independent directors, my firm, anybody  
22 came on the scene. This was the nature -- this was the life  
23 that these folks were living.

24 And then, you know, we got hired. We took Highland into  
25 bankruptcy as the trial was about to begin. The automatic

1 stay went into effect. And we moved, you know, obviously, in  
2 a very different direction a few months later after the  
3 Independent Board was appointed and put in place.

4 So, with that, you know, Mr. Daugherty had a very  
5 substantial claim, and -- and we worked very hard, and Mr.  
6 Seery is going to testify that he worked very hard to  
7 understand the claim and to try to get down to the strengths  
8 and weaknesses of the claim itself. And we engaged in  
9 substantial motion practice, as Your Honor may recall,  
10 particularly in the fall of 2020, before we had a plan  
11 confirmed.

12 We had -- Mr. Daugherty had the comfort motion, where he  
13 sought the Court's approval to continue to pursue his claims  
14 against nondebtor individuals and entities, and that motion  
15 was granted. We had another contested hearing where he moved  
16 to amend his claim again. The Court granted Mr. Daugherty's  
17 motion at that time, and that's what resulted in the  
18 preparation and filing of what became Claim No. 205 that we're  
19 here to compromise today.

20 Mr. Daugherty then sought permission to lift the stay so  
21 that he could go -- Highland -- go after Highland in Delaware,  
22 and that's where Your Honor drew the line and said no, the  
23 claims against the Debtor will be determined here.

24 And then, of course, we had the very lengthy contested  
25 evidentiary hearing on Mr. Daugherty's 3018 motion. And,

1 again, that motion was brought simply to allow his claim for  
2 voting purposes. That's where the two-thousand-some-odd-page  
3 appendix was, you know, first presented to the Court. And at  
4 the conclusion of that, Your Honor granted the 3018 motion and  
5 allowed his claim in the approximate amount of \$9.1 million.  
6 I believe that's Exhibit 1 on our witness and exhibit list.

7 And so with that background, having litigated not the  
8 merits but pretty much -- pretty much everything but the  
9 merits, and I daresay as close to the merits as you can get,  
10 and with the Debtors at that point actively pursuing a viable  
11 plan, because by the time Claim No. 205 was filed the Court  
12 has approved the disclosure statement and we were trying to  
13 get to confirmation, negotiations with Mr. Daugherty began in  
14 earnest.

15 You'll hear Mr. Seery testify that, you know, he had a lot  
16 on his plate. The Independent Board had a lot on its plate.  
17 But one of the things on their plate was Mr. Daugherty and  
18 trying to get a resolution of his claim. And there was a lot  
19 of back and forth, you know, between the lawyers, between the  
20 principals, and we were able to announce at the commencement  
21 of the hearing -- I think Mr. Ellington quoted from it in the  
22 very first paragraph of his limited objection -- the  
23 presentation of the terms of the agreement as they existed at  
24 that time.

25 Mr. Seery will testify that, you know, it took another

1 nine months or so to actually document the agreement. He'll  
2 testify that, you know, Pat Daugherty's settlement wasn't the  
3 only thing that the Independent Board and that he were  
4 involved with, that they were working very hard to get to an  
5 effective date.

6 He'll testify that Mr. Daugherty is not an easy  
7 negotiator. And I mean this respectfully to Mr. Daugherty.  
8 But he personally engaged in negotiations directly with Mr.  
9 Seery. We did it through lawyers. We went through countless  
10 drafts. And Mr. Daugherty was a dogged negotiator. He asked  
11 for -- you know, the interesting thing here is we're having  
12 this hearing today, Your Honor, and Mr. Ellington did not seek  
13 any discovery at all. Had he done so, he would have found out  
14 that there were, you know, probably a dozen or more draft  
15 settlement agreements that went back and forth. And if you --  
16 Mr. Seery will testify to some of the things that Mr.  
17 Daugherty asked for that we said no to.

18 And, again, you know, Mr. Daugherty has the right to ask  
19 for whatever he wants, and Mr. Seery and the Independent  
20 Board, now the Oversight Board, certainly in consultation with  
21 the Oversight Board, have the authority to decide what's in  
22 the best interest of their estate.

23 And so it was -- it was a -- it was a difficult  
24 negotiation. And at the end of the day, we did get to yes,  
25 and I think the Court will find that the settlement is very

1 modestly different from what was presented to the Court back  
2 in February of 2021.

3 And, you know, let's just talk about the two issues. Mr.  
4 Seery -- Mr. Ellington, rather, seems to suggest in his papers  
5 that somehow, you know, Mr. Seery just caved and gave him  
6 these observer rights in HERA and ERA in order to enable Mr.  
7 Daugherty to have more weapons to go after Mr. Ellington.  
8 Ms. Dandeneau is free to ask Mr. Seery any questions she wants  
9 today, subject to the attorney-client privilege, but I don't  
10 think there will be a scintilla of evidence that will show  
11 that Mr. Seery thought about any of these issues that Mr.  
12 Ellington is apparently taking quite personally. What Mr.  
13 Seery will testify to is that he was singularly focused on  
14 getting to yes, on getting a deal done with Mr. Daugherty.

15 And with respect to the observer rights, I want to just  
16 focus on that for a second because I think it's -- I think Mr.  
17 Ellington mistakenly characterizes what that is, because it's  
18 not a right at all. Mr. Daugherty has no rights whatsoever  
19 vis-à-vis the Oversight Board. It is a very simple and  
20 uncontro... it should be a relatively uncontroversial  
21 provision. It's Paragraph 3 of the settlement agreement, and  
22 it simply says that Highland will use reasonable efforts --  
23 not best efforts, as Mr. Ellington's pleading says --  
24 reasonable efforts to see if the Oversight Board will give him  
25 access to the meetings.

1 Mr. Daugherty has absolutely no right to be in the  
2 meeting. The Oversight Board has the "sole discretion" to let  
3 him into the meeting. And so they can restrict him  
4 arbitrarily. They can restrict him for no reason. They have  
5 the sole discretion on whether to let him in.

6 And, importantly, Mr. Daugherty, if he's permitted to  
7 participate or listen in or observe these meetings, he will be  
8 required to abide by the Oversight Board's policies,  
9 procedures, and agreements, including agreements concerning  
10 confidentiality.

11 Mr. Daugherty has no decision-making authority. He's not  
12 a member of the Oversight Board. He has no ability to bind  
13 the Oversight Board. He would merely be given access to  
14 observe Oversight Board meetings, at the discretion of the  
15 Oversight Board. And it's no more, no less. He has no rights  
16 whatsoever, no ability to control the Oversight Board, no  
17 right.

18 And I was actually thinking about this earlier. And, you  
19 know, Mr. Ellington's pleadings suggest that he's very  
20 concerned that, you know, he may share information or that  
21 kind of thing. You know, this is America. There's a First  
22 Amendment. Mr. Daugherty has the right to speak with whoever  
23 he wants to speak with who's willing to speak with him. And  
24 so there is nothing right now preventing Mr. Daugherty from  
25 picking up the phone and calling one of the Oversight Board

1 members and say, I want to share something with you.  
2 Absolutely nothing in the trust agreement that prevents that,  
3 nor should it. The Oversight Board should have the ability to  
4 hear views from anybody who they want to hear from. They just  
5 should.

6 The Oversight Board members are still going be bound by  
7 their fiduciary obligations. They are going to be bound by  
8 their -- all of the duties that they have. But we shouldn't  
9 sit here today and speculate that something untoward might  
10 happen in the future. It's not fair to the Oversight Board  
11 members. There is absolutely no evidence in the record to do  
12 it. And there's really no basis to suggest that this is  
13 somehow a plan modification. That's it.

14 The other piece is HERA and ERA. You know what? Before I  
15 leave that, I did want to point out where Your Honor started,  
16 and that is Mr. Ellington has no claims. He's withdrawn every  
17 single claim. Therefore, he's not a beneficiary of the trust.  
18 Therefore, the Oversight Board owes him no duty whatsoever.  
19 And so he really has no standing to challenge that portion of  
20 it. I don't think he has standing, frankly, to challenge the  
21 HERA/ERA portion, but that part of it is just crystal clear,  
22 because he has no interest in the trust itself.

23 And so I don't understand how his interest can be -- he  
24 may have a personal interest. But that's not -- that's not  
25 standing. That's not a legally cognizable interest that would

1 allow him to object to the access that might be given to him,  
2 subject to the Oversight Board's discretion.

3 HERA and ERA, Your Honor, is very simple. Mr. Seery will  
4 testify that, you know, Mr. Daugherty's claim itself seeks  
5 over \$26 million of damages related to the dissipation of the  
6 assets from HERA, as well as Highland's acquisition of the  
7 interests of the other limited partners, his theory of the  
8 case. And, frankly, we -- we disagree with this very hard,  
9 and that's why the numbers don't bear any relation to what the  
10 claim is. But his theory is that Highland wrongfully bought  
11 out all of the limited partners. He became the last limited  
12 partner. And since Highland is not entitled to the assets  
13 that Highland took, they should be given to him.

14 Again, not a theory that we put a lot of weight on, but it  
15 is a theory. And at the end of the day, Mr. Seery is going to  
16 -- and this will be the most important part of his testimony,  
17 I think -- he's going to testify that the issue of HERA and  
18 ERA was of great concern to the Debtor, and it was of great  
19 concern because we have seen Mr. Daugherty litigate with Mr.  
20 Ellington, with Mr. Leventon, with Mr. Dondero, with Highland,  
21 for the better part of a decade, and we wanted to make one  
22 hundred percent certain that we were done with Mr. Daugherty  
23 in terms of litigation and claims.

24 And so Mr. Seery is going to testify that we tried two or  
25 three different ways to address the HERA/ERA issue, and this

1 is what we ultimately came up with. Let's just give it to him  
2 and get that release. Really, one of the most important  
3 aspects of the -- of the settlement agreement is attached as  
4 an exhibit. It's the HERA release itself, Your Honor. And  
5 that's what gives the Debtor finality with Mr. Daugherty.  
6 That is among the most important pieces of the settlement  
7 agreement. It's attached as an exhibit. It's all signed up  
8 and ready to go.

9 But that's, that's really -- you know, when Mr. Ellington  
10 says in his pleading that there's no basis for doing this  
11 other than to help Mr. Daugherty, respectfully, Mr. Ellington  
12 has it wrong. And if he had taken any discovery, he would  
13 have found that out and maybe we could have saved today's  
14 hearing. Because the Debtor had a vital interest in resolving  
15 the HERA and ERA issues because it was part and parcel of  
16 getting to yes -- it was part and parcel of both getting to  
17 yes as well as making sure that Mr. Daugherty had his allowed  
18 claim in the manner in which we've agreed but is otherwise  
19 done with the Debtor.

20 So, with that, Your Honor, I think the evidence ultimately  
21 is going to establish, you know, very, very easily that this  
22 settlement is fair, reasonable, and in the best interests of  
23 the Debtor and its stakeholders.

24 I have nothing further unless Your Honor has any  
25 questions.

1 THE COURT: All right. First, let's be clear for the  
2 record that I have admitted the Debtor's exhibits at Docket  
3 Entry 3270 that were earlier mentioned.

4 And next, I guess I'll hear any opening statement from a  
5 friendly party. Mr. Daugherty's counsel, did you want to say  
6 anything as far as an opening statement?

7 MR. UEBLER: Thank you, Your Honor.

8 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

9 MR. UEBLER: I just want to say that Mr. Daugherty  
10 joins in Highland's request that the settlement be approved,  
11 but otherwise we'll rely on Mr. Morris's presentation today.

12 THE COURT: All right. Thank you. Ms. Dandeneau,  
13 we've obviously been speculating about the standing of your  
14 client. What did you want to say as far as an opening  
15 statement and addressing that?

16 OPENING STATEMENT ON BEHALF OF SCOTT ELLINGTON

17 MS. DANDENEAU: Your Honor, I would reserve any  
18 comments on the settlement until after Mr. Seery's  
19 examination.

20 But with respect to standing, we acknowledge that Mr.  
21 Ellington is no longer a creditor of Highland's estate. I  
22 understand the typical standing requirements to appear in  
23 bankruptcy court.

24 I would note that Mr. Ellington was very careful in terms  
25 of his objection to the settlement agreement. I thought it

1 was interesting that I've been criticized now for not taking  
2 discovery. That's probably a first in this case.

3 But he does not -- he made it very clear. He does not  
4 object to the economic terms of the Debtor's proposed  
5 settlement. And if you look at -- if you look at the nature  
6 of our objection, it was more that there are -- there are  
7 issues that we thought were important and should be considered  
8 by the Debtor in the exercise of its business judgment that we  
9 don't think it was raised.

10 And the reason why Mr. Ellington brought that to the  
11 Court's attention and to the Debtor's attention, Mr. Ellington  
12 -- what's unusual about this settlement is that, after the  
13 terms of the settlement were announced to this Court at the  
14 confirmation hearing, now over a year ago, the settlement was  
15 amended to give Mr. Daugherty observer status to the Oversight  
16 Board, but it also was amended to include the HERA provision.  
17 And I understand Mr. Morris's -- I hear Mr. Morris's arguments  
18 about that.

19 But the effect of the observer status provision with  
20 respect to -- on the Oversight Board is if the Oversight Board  
21 -- and, again, we don't challenge the fact that the Oversight  
22 Board, according to the settlement agreement, has the  
23 discretion on whether or not to allow Mr. Daugherty access --  
24 but we believe the result of this is to give Mr. Daugherty  
25 access to confidential information about Mr. Ellington.

1 And also, by the way, Mr. Daugherty himself has stated  
2 that one of the purposes of the transfer of the HERA shares is  
3 to enable Mr. Daugherty to have access to nonpublic  
4 information about Mr. Ellington.

5 These are noneconomic provisions, so I would argue, Your  
6 Honor, whether Mr. Ellington is a beneficiary of the Claimant  
7 Trust or not should not be relevant to the standing issues  
8 with respect to these issues.

9 And Your Honor knows that Mr. Ellington has filed a  
10 complaint. He filed a complaint in state court against Mr.  
11 Daugherty, alleging that Mr. Daugherty has engaged in stalking  
12 activities with respect to Mr. Ellington, Mr. Ellington's  
13 family, including his elderly father, his sister, and her  
14 minor children. And we're not here to argue the merits of  
15 those, but we do think that those allegations and what the  
16 Debtor would have done with respect to those allegations and  
17 what the Debtor will do in light of those allegations is  
18 important to consider.

19 And Mr. Daugherty, by the way, chose to remove that action  
20 to this Court, but that's the subject of a separate adversary  
21 proceeding. It's subject to a remand and abstention motion.

22 But I do think, Your Honor, in light of everything that  
23 has occurred, or even allegedly has occurred, we feel that it  
24 is incumbent upon this Court and the Debtor to take notice of  
25 these allegations and to really not put these -- not put

1 themselves in a position where they could generate additional  
2 claims by providing Mr. Daugherty access to information that  
3 could enable the activities of Mr. Daugherty.

4 So, on that basis, I understand, Your Honor, this is an  
5 unusual argument, but we would respectfully request that we be  
6 able to at least make our record at the hearing and be heard  
7 on these issues.

8 THE COURT: All right. Well, with that, as I said  
9 earlier, while I find the standing to be extremely I guess I  
10 should say doubtful, the Debtor has to prove up the bona fides  
11 of the settlement in any event. Put on evidence for me to  
12 assess whether it's fair and equitable, in the best interest  
13 of the estate, and analyze it under all of the Fifth Circuit  
14 standards.

15 So I'll allow you to examine Mr. Seery on behalf of Mr.  
16 Ellington to ask him anything you think is pertinent to the  
17 settlement. I would hope we don't spend too much time in  
18 court on this, because, again, I'm really doubtful about  
19 whether a higher court would find standing in this situation  
20 where he's not a creditor, he has no pending proofs of claim,  
21 and, you know, is he a party aggrieved by this proposed  
22 settlement? Again, I think it's doubtful. But I will give  
23 Mr. Ellington the benefit of the doubt and let counsel ask  
24 questions that you think are pertinent to the issues here.

25 All right. Mr. Morris, do you call Mr. Seery at this

Seery - Direct

23

1 time?

2 MR. MORRIS: I do, Your Honor.

3 THE COURT: All right. Mr. Seery, if you could say  
4 "Testing, one, two; testing, one, two" so we can --

5 MR. SEERY: Testing, one, two. Good afternoon, Your  
6 Honor.

7 THE COURT: Good afternoon. Please raise your right  
8 hand.

9 (The witness is sworn.)

10 THE COURT: All right. Thank you. Mr. Morris, go  
11 ahead.

12 MR. MORRIS: Thank you, Your Honor. I'm going to try  
13 to make this much briefer than I had originally intended.

14 JAMES P. "JIM" SEERY, JR., REORGANIZED DEBTOR'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. MORRIS:

17 Q Mr. Seery, can you hear me okay?

18 A Yes, I can.

19 Q Okay. Can you just -- are you generally familiar with the  
20 nature of Mr. Daugherty's claim against Highland?

21 A Yes, I am.

22 Q Can you just describe for the Court your understanding of,  
23 you know, in general terms, the nature of the --

24 A Basically, Mr. Daugherty has a claim that has one or more  
25 of the components, but distilled down to the essence, there's

1 five major components that come out of about 12 years' worth  
2 of litigation with the Debtor.

3 The first is the enforcement of the HERA judgment that he  
4 received in Texas state court. This was -- I think we call it  
5 Texas Litigation 1. Highland got a judgment, as Mr. Morris  
6 said in his opening, against Mr. Daugherty for about \$2.8  
7 million. Mr. Daugherty got a judgment against Highland for  
8 about \$2.6 million. Rather than offset, the parties appealed,  
9 and it went on from there.

10 An important component of that piece is Mr. Daugherty's  
11 argument that, throughout the case in Texas, Highland and the  
12 other defendants maintained that there was an escrow that was  
13 going to benefit Mr. Daugherty in the event that he got his  
14 judgment.

15 And that relates to the second component of his claims,  
16 which is the transfer of the HERA assets. HERA was the  
17 Highland Employee Retention vehicle, it was put in place after  
18 the financial crisis, and it was purportedly designed to  
19 retain employees. Mr. Daugherty maintains that the removal of  
20 the assets from HERA and the transfer of those assets to  
21 Highland and perhaps other places was a detriment to him  
22 because not only did he not get his roughly 20 percent  
23 interest in HERA, he also had a claim that the structure of  
24 HERA was a last-man-standing structure, meaning that it was a  
25 pool of assets designed to hold a team of employees together.

Seery - Direct

25

1 If you left, the pool stayed the same. In his reading, other  
2 -- other employees -- the remaining employees picked up the  
3 assets that you left behind.

4 We have defenses to each of these, but that's his  
5 position.

6 The third component of his -- and that was a big piece.  
7 That's over \$25 million. The first piece is, with interest,  
8 around four. The next piece is the indemnity. Mr. Daugherty  
9 maintains that he was a -- as a partner, he was entitled to  
10 certain indemnification for acts that he did and costs that he  
11 incurred in advancing the interests of Highland, and that's  
12 around a \$5 million piece.

13 In addition, he's got a claim from the 2008 compensation  
14 -- this is from the 2007-2008 tax audit -- for about \$2.7  
15 million. He received -- Mr. Daugherty received a net loss  
16 from Highland that year which gave him an economic benefit by  
17 reducing his taxes. That tax year is still under audit at  
18 Highland. Amazingly. But maybe not for Highland. And we  
19 thought it would be resolved by now. That's -- that's, he  
20 claims, around \$2.7 [million]. I think our thought, that even  
21 if it was -- there are a lot of defenses to it, but it would  
22 be a much lower number. That battle is still going on. We  
23 are not addressing that piece in this settlement.

24 And the final piece of his claim, distilled down, is fees,  
25 fee-shifting, fees on fees, related to mainly the Delaware

Seery - Direct

26

1 action. And I think the best support for that, for our  
2 defense, is that the best support for that is when you go  
3 through that materials that Mr. Daugherty received in the --  
4 from production related to the Delaware judge exercising the  
5 crime-fraud exception to the attorney-client privilege, it's a  
6 pretty torrid tale of stripping of HERA -- HERA's assets,  
7 stripping of the so-called escrow. It actually looks like,  
8 frankly, the escrow was never really an escrow and it was a --  
9 it was a fraud from the beginning. And that one's a pretty  
10 disturbing one. We think it's -- our defenses are it's very  
11 hard to shift fees in the American system, but it's -- it's  
12 not a bare claim.

13 And so that's the essence of his claim, distilled down.

14 Q And -- thank you, Mr. Seery. And just to move this along,  
15 do you recall, in the fall of 2020, we had the contested 3018  
16 hearing?

17 A Yes.

18 Q And were all of these issues analyzed, debated, and  
19 presented to the Court, to the best of your recollection?

20 A They were. I would say that the fee-shifting one got  
21 shorter shrift. We probably had less information at the time  
22 than we do now. Mr. Daugherty clearly had the information.  
23 But because it was an estimation hearing, it was a little more  
24 truncated, and I think that at that time he was -- the fee  
25 shifting was, at least from the Court's perspective, and I

Seery - Direct

27

1 think following the traditional American rule, looked on a  
2 little bit -- with a bit of a jaundiced eye in terms of its  
3 validity. And he was going -- he was clear that he could in  
4 the future prove that up, but we didn't -- he didn't really  
5 explore that issue too often. Or too much.

6 Q Can you describe for the Court what you and the  
7 Independent Board did between the end of the 3018 hearing and  
8 confirmation to negotiate the agreement in principle that was  
9 announced to the Court in early February 2021?

10 A Sure. As a quick prelude to that, let me just say that  
11 the board, the Independent Board, along with counsel and  
12 financial advisors, spent a tremendous amount of time on Mr.  
13 Daugherty's claims as they evolved.

14 In addition, because the record is so voluminous, we spent  
15 a tremendous amount of time deciphering the record and trying  
16 to divine exactly where the risks were and where our better  
17 defenses were.

18 So, coming into the 3018, we felt pretty -- pretty good  
19 about where we -- where we were clearly exposed and where we  
20 had good defenses.

21 Where we were clearly exposed, and we actually  
22 acknowledged at the 3018, is on the HERA, the initial HERA  
23 piece, which was his \$2.6 million judgment plus interest.  
24 There -- there really were no defenses to that. It had been  
25 affirmed on appeal. Highland simply didn't pay the judgment.

1 After the 3018, we brought a new focus to trying to  
2 resolve with Mr. Daugherty what the remaining components would  
3 be.

4 We'd hoped to get a holistic settlement, including with  
5 respect to the 2007-2008 tax piece, which is the loss  
6 carryforward that he was able to use and the value of that.  
7 We were not able to reach that conclusion, and I can go  
8 through that a little bit more later. But we did go through  
9 each of the other components and negotiate with Mr. Daugherty  
10 as we moved towards confirmation.

11 Q And what took so long to get from February of 2021 until  
12 the end of the year when you finally got signatures on the  
13 page? What was happening during that intervening period?

14 A Well, I would say, first and foremost, while Mr.  
15 Daugherty's claim was exceptionally important, he's a large  
16 claim, UBS's claim was bigger, and we were in intense  
17 negotiations with UBS.

18 As you'll recall, right around that time we discovered the  
19 Sentinel fraud, and that was extremely problematic because it  
20 upset the UBS negotiation. That led to us focusing on the --  
21 what we could divine on what happened with respect to the  
22 transfers out of the Defendants of UBS and Highland's role in  
23 that and the negotiations, which led to a renegotiation around  
24 the terms of the UBS settlement. That wasn't completed until  
25 I believe it was March of '21.

1 We then turned to focus on the remaining claims, including  
2 with -- obviously, other issues in terms of asset monetization  
3 and trying to move towards effective date financing, indemnity  
4 trust. But we did turn to Mr. Daugherty and try to document  
5 the settlement we had.

6 Mr. Daugherty took the perspective that, well, wait a  
7 second, now that I see what happened with UBS and I see those  
8 transfers, I think my claims regarding asset stripping are  
9 even better. Where he thought his only good third-party  
10 support for asset tripping and the intentions of a personal  
11 vendetta and sweeping it for personal gain was really around  
12 Acis, he now -- he could now rely on both the Acis transfers  
13 and the transfers that we had exposed with respect to SOHC and  
14 CDO Fund, which were the two UBS defendants. And from Mr.  
15 Daugherty's perspective, that changed the nature of his claims  
16 and his risk profile. So, but I wouldn't say the negotiations  
17 began in earnest again, but there was a renegotiation around  
18 terms.

19 Q Okay. And during the negotiations, did the parties  
20 exchange numerous drafts of the agreement?

21 A It has to be at least a dozen. And it was -- really, the  
22 focus around those, after we got into negotiation, argument, I  
23 don't think it's fair to call it a dispute, but certainly  
24 healthy argument our respective positions, we still settled on  
25 a Class 8 claim and a Class 9 claim. I was very firm on where

Seery - Direct

30

1 I thought the maximum exposure was on the Class 8/9 -- Class 8  
2 claim, and then we settled on -- negotiated around the Class 9  
3 number and not wanting to move, because our cash was tight,  
4 any other kind of distribution to Mr. Daugherty. And we had  
5 healthy arm's-length negotiations with respect to each of  
6 those components.

7 We then focused on the other terms. Mr. Daugherty's  
8 always been clear from the start that he was not releasing  
9 anybody who wasn't a current employee at the time we settle.  
10 He didn't want to do that. That was -- that was my  
11 insistence, and I had a team that I wanted to make sure we  
12 were protecting, because we also have some obligations to them  
13 as current employees. But he was -- he was certainly keeping  
14 his litigations against Mr. Dondero, Mr. Ellington, some third  
15 parties, as well as HERA and ERA.

16 And what he was looking for in the negotiations around the  
17 terms were -- was as much flexibility around HERA and ERA,  
18 because he had a judgment against HERA and ERA. And he wanted  
19 to make sure that he could -- I believe it's the only creditor  
20 from our records of HERA and ERA -- that he could control that  
21 entity, and he was going to try to do that through an  
22 involuntary, if that's what it took. And he wanted to be able  
23 to use that in his continuing litigation against the other  
24 parties that he thinks defrauded him with respect to the so-  
25 called escrow.

1 And then the other component was I think he really was  
2 pushing hard on the structure of the settlement so that it  
3 might provide some value to him from an evidentiary  
4 perspective, even around things like the whereas clauses.

5 So we took the perspective that I can only put in the  
6 whereas clause what I have personal knowledge or that I have  
7 been able to decipher from our own records, and that anything  
8 else would be an assertion of his. And Mr. Daugherty took the  
9 perspective that if I had -- if he has court records in  
10 Delaware, why can't I simply affirm those? And that was a  
11 rather healthy negotiation around those types of items.

12 Q Before entering into the agreement, did you consider the  
13 potential costs, and I think you've described some of the  
14 risks, but if you could just perhaps concisely let the Court  
15 know if you considered the costs and risks of litigation as  
16 the alternative to the settlement before deciding that this  
17 was the right thing to do.

18 A Absolutely. In all of our settlements, you know, we weigh  
19 the risk of winning versus the cost of settling. We also  
20 factor in the cost of litigation.

21 To describe the various litigations that have gone on here  
22 as acrimonious and personal and bitter is to grossly  
23 understate how vituperative and how dug-in the parties are.  
24 These are exceptionally deep-cutting litigations and personal  
25 issues between the respective parties. And our objective was,

1 frankly, to extricate ourselves from that at what we think is  
2 a reasonable price. If the risk-reward wasn't balancing  
3 correctly, we would have litigated on the components.

4 But litigating here would have been extremely difficult.  
5 And the reason I say that is because we're talking, as I  
6 mentioned, about a ten-plus year litigation record. We're  
7 talking about three separate litigations that are currently  
8 either outstanding or have various components that have to be  
9 dealt with. Multiple parties in each of them. A very  
10 voluminous record. And from our perspective, our witnesses we  
11 don't think would have been -- one is they're hostile to us,  
12 but two, we don't think that they would have been the best  
13 witnesses from a credibility perspective. So we would have  
14 been weak on witnesses, relying on docs, a giant record. It  
15 would have been exceptionally expensive.

16 Q All right. Let's just finish up with the issues that Mr.  
17 Ellington has raised. Are you generally familiar with the two  
18 issues that Mr. Ellington is objecting to?

19 A I am, yes.

20 Q Can you describe for Judge Jernigan how the issue of  
21 oversight access came to be and what your understanding is of  
22 the Reorganized Debtor's obligation under Section 3 of the  
23 proposed settlement agreement?

24 A Sure. Mr. Daugherty has the perspective of a senior  
25 partner at Highland. And many of the assets that we own,

1 oddly, are still there from when he was there.

2 Now, to be fair and to be sure, they are very different  
3 assets ten-plus years later. But it's not unusual for  
4 settlements, particularly creditors of entities that are  
5 stressed, to want to give their input into how they think an  
6 asset should be monetized, what's the best way to bring that  
7 value, because that's going to inure to their benefit as a  
8 settling creditor.

9 Mr. Daugherty had the perspective that he could bring a  
10 significant amount of expertise to that endeavor. Frankly,  
11 since, as I said, he's been out for a long time, he does have  
12 significant business acumen, and he put many of these  
13 investments on, including MGM and Trussway, at Highland. They  
14 were his. But the world has changed, but that's not an  
15 unusual ask.

16 So I couldn't promise to him that I could put him on the  
17 Oversight Board because I'm not on the Oversight Board. I  
18 couldn't promise him that I could even give him observer  
19 status, because, again, I'm not on the Oversight Board. I  
20 have the -- I'm overseen by the Oversight Board in many  
21 respects, and I do -- I am entitled to attend the Oversight  
22 Board meetings. But he asked for observer status, and I said  
23 I would ask for it, but it would be entirely up to the  
24 Oversight Board to make a determination if it should be  
25 granted, how it should be granted, whether it can be

1 rescinded, how -- what the terms would be.

2 Like any board that I've been around in these types of  
3 situations, there are often observers. They are either  
4 contractual or granted other -- for other reasons. And their  
5 status is limited. If -- oftentimes, if it's anything to do  
6 with that particular creditor or anything that might be  
7 extremely sensitive, they'll usually -- the boards go into  
8 executive session without observers.

9 Q Does --

10 A So I agreed -- I agreed to ask for it.

11 Q Okay. Before getting to that agreement, did Mr. Daugherty  
12 initially demand an actual seat on the Oversight Board?

13 A I don't recall. It would not surprise me at all, but I  
14 just don't recall.

15 Q And I appreciate the candor. Under the settlement  
16 agreement, does Mr. Daugherty have any right to participate in  
17 any Oversight Board meeting?

18 A No. Again, it's -- I was very specific that I'm not the  
19 Oversight Board. I can't grant observer status. I can simply  
20 ask for it in good faith and the board will make its own  
21 determination.

22 Q Okay. Does Mr. Daugherty have -- withdrawn. Let's move  
23 to the HERA and ERA. Can you explain to the Court how, you  
24 know, the issue of the treatment of HERA and ERA evolved and  
25 how you wound up at the point of actually agreeing to transfer

Seery - Direct

35

1 those entities to Mr. Daugherty?

2 A Yes. So, recall that Mr. Daugherty has a judgment against  
3 ERA. And ERA is the management arm of HERA, but it has no  
4 other business or assets. And I think it has a very small few  
5 hundred dollars, maybe a few thousand dollar checking account.  
6 I don't recall what it is, but minimal assets. So, really no  
7 value to the estate.

8 One of the components, critical components to Mr.  
9 Daugherty from the start was that he was not going to release  
10 his claims against HERA and ERA, only the claims against  
11 Highland, because if that Delaware -- I think we call it  
12 Delaware 1 Litigation, but it might be Delaware 2 -- was still  
13 outstanding, and he wanted to continue to pursue that  
14 litigation with Highland severed off.

15 My concern was that if he was continuing to sue HERA and  
16 ERA and he had a -- he has a judgment against HERA and ERA or  
17 he has a joint and several judgment, HERA and ERA could find  
18 itself in an insolvent situation, and then either Mr.  
19 Daugherty or a trustee acting for Mr. Daugherty might come  
20 after Highland or the estate. I think it would be attenuated  
21 and hard to do, but there was a risk of that.

22 So we initially started negotiations around a structure  
23 where he would -- he could maintain his claims against HERA  
24 and ERA, but if he received anything from Highland on account  
25 of anything that happened to HERA and ERA, he had to turn it

Seery - Direct

36

1 back over to us, so that he can use it to continue his  
2 litigations with nonsettling parties but he couldn't back-door  
3 that into something against the Reorganized Debtor or the  
4 Highland estate.

5 The problem with that was that we were set up to  
6 effectively maintain HERA and ERA as the owners of the GP and  
7 the -- it effectively is a GP, but I believe it's an LLC  
8 structure -- and the other membership interests.

9 He then wanted us to turn it over to him, because I think  
10 he thought that was a more effective way to accomplish what he  
11 wanted to anyway without having to go through the step of a  
12 bankruptcy. It was certainly more efficient for us. But what  
13 that led to was then negotiation around making it clear that,  
14 once again, none of the -- since we're a settling party, we're  
15 bringing those claims, none of the actions out of HERA and ERA  
16 come against the former owner of HERA and ERA, either directly  
17 or indirectly.

18 And so we structured it with a rather detailed and  
19 extremely broad release of HCMLP and any of the Highland --  
20 Highland Limited -- Capital Management Limited Partner related  
21 parties. And that's the structure of the deal that you see  
22 now.

23 When the deal was originally announced in court, we had  
24 not yet started to document. We were just on the financial  
25 terms. But it was clear that these -- he wanted to maintain

Seery - Direct

37

1 his litigations, and we were -- we were focused on the key  
2 financial terms, the Class 8, the Class 9, the cash component,  
3 which was really covering the expenses, some of the expenses  
4 he's had, as well as the releases related to anybody who's  
5 going to be a continuing employee at the Reorganized Debtor.

6 When we got into the documentation, it went to this  
7 structure where he'd maintain his claims, but if he received  
8 anything on account of a Highland loss, any Highland party  
9 related loss, he would have to turn it over. And then it  
10 evolved to the structure where we are now, which is we'll give  
11 him HERA and ERA. They have no value to Highland. And we  
12 want to make sure that we are extricated completely from any  
13 of the litigations or costs.

14 Q And last question on this topic. I guess last two  
15 questions. You're familiar with the HERA release that is  
16 attached to the settlement agreement?

17 A Yes.

18 Q Okay. Last question. Is that an integral component of  
19 the settlement agreement from the Reorganized Debtor's  
20 perspective?

21 A Essential to the transaction. The basic terms of the deal  
22 were initially approved by the Independent Board. And that  
23 included the initial deal that was announced in court as well  
24 as the evolving financial terms. But before the document was  
25 done, the Independent Board -- we had the effective date, the

Seery - Direct

38

1 Independent Board is gone, and it's been approved by the  
2 Oversight Board. I believe it's a component of the trust  
3 agreement that this type of settlement has to be approved by  
4 the Oversight Board, that I can't do it on my own, but we're  
5 running it so that I use the Oversight Board -- or rely on the  
6 Oversight Board; I shouldn't say use -- as a true board of  
7 directors. This is a critical component, both to me as the  
8 CEO of HCMLP, to me as the Claimant Trustee, and to the  
9 Oversight Board sitting above me and observing and monitoring  
10 my activities.

11 MR. MORRIS: All right. I have no further questions,  
12 Your Honor.

13 THE COURT: All right. Friendly parties first. Mr.  
14 Uebler, do you have a question or questions of Mr. Seery?

15 MR. UEHLER: I do not, Your Honor. Thank you.

16 THE COURT: All right. Ms. Dandeneau, do you have  
17 cross?

18 MS. DANDENEAU: Yes, I do, Your Honor. And thank you  
19 again for your indulgence. I will attempt to streamline my  
20 examination of Mr. Seery as much as possible.

21 If I may, Your Honor, could the Court allow Laura  
22 Zimmerman to share her screen for purposes of this  
23 examination?

24 THE COURT: All right. That's fine.

25 MS. DANDENEAU: Okay. And so I would just ask Ms.

Seery - Cross

39

1 Zimmerman to put on the screen what is Exhibit 1 to the  
2 Debtor's Exhibit 2, which is the settlement agreement attached  
3 to Mr. Morris's declaration that's been admitted into  
4 evidence. It's at Docket 3270-2. And let's just go to Page 5  
5 of the -- 5 of the PDF, which is Paragraph 3 of the settlement  
6 agreement. And if we can maybe just make it larger for some  
7 of us to see.

8 CROSS-EXAMINATION

9 BY MS. DANDENEAU:

10 Q All right. Mr. Seery, I just wanted to -- this is, when  
11 we talk about the observer rights, this Paragraph 3, I'm not  
12 going to read it out loud, but this is the document, the  
13 paragraph that has the heading Observation Access, is what  
14 you've been referring to with respect to the provisions  
15 relating to the observer status on the Oversight Board. Is  
16 that correct?

17 A That's correct. Just one clarification, again. And I  
18 hope it may just be nomenclature, but to the extent that  
19 there's weight to it, it's observation access. There are no  
20 rights. The rights vest with the Oversight Board and how  
21 they'll grant access or not.

22 Q Okay. Thank you for that clarification. And just for  
23 simplicity, can we refer to this provision when we're talking  
24 as the observer provision, --

25 A Yes.

1 Q -- or would you -- okay. Thank you.

2 MS. DANDENEAU: And so, Ms. Zimmerman, if we could  
3 please turn to Page 10 of the settlement agreement, which I  
4 believe is Page 14 of the PDF, and just look at the Paragraph  
5 8.

6 BY MS. DANDENEAU:

7 Q And again, I'm not going to -- I will spare everyone a  
8 dramatic reading of the provision, but is this what we would  
9 refer to as the HERA provision?

10 A That's correct.

11 Q Not really intending to leave ERA out, but just it's hard  
12 enough to pronounce HERA. So let's talk a little bit about  
13 the changes made to the settlement agreement.

14 MS. DANDENEAU: If we could please, Ms. Zimmerman,  
15 pull up Docket -- Exhibit -- what we have marked as Exhibit  
16 SE-5, which is found at Docket 3088.

17 I would note that Highland did incorporate in its witness  
18 and exhibit list all pleadings in the case. This is just  
19 Highland's motion to approve the settlement agreement. And we  
20 are marking this as Exhibit SE-5. No need, I believe, to move  
21 it into evidence. This is just as a demonstrative.

22 If we could please turn to Page 9 of the motion, which I  
23 believe is Page 12 of the PDF. And if we could just blow up  
24 those bullets on Paragraph -- under Paragraph 40. And maybe  
25 move it down, just to make sure we've captured all of the

1 bullets.

2 BY MS. DANDENEAU:

3 Q These bullets -- in these bullets, Highland recites the  
4 material terms of the settlement. Correct, Mr. Seery?

5 A I believe so, yes.

6 Q And the fifth bullet, okay, refers to what we call the  
7 HERA provision. Correct?

8 A Yes.

9 Q Now, there's -- there's -- if we scroll down a little bit,  
10 there is a Footnote 5.

11 MS. DANDENEAU: And maybe we can blow that up a  
12 little bit.

13 BY MS. DANDENEAU:

14 Q And the Footnote 5, but I'll read it, says, "With two  
15 exceptions, the settlement terms are materially the same as  
16 those announced on the record on February 2, 2021 in  
17 connection with the confirmation hearing on the Debtor's plan.  
18 The two exceptions are that (a) the Class 9 claim was  
19 increased by a million dollars; and (b) the Reorganized Debtor  
20 agreed to transfer its interests in HERA and ERA to Mr.  
21 Daugherty."

22 Did I read that correctly, Mr. Seery?

23 A I believe so, yes.

24 Q Okay. And the granting of the observer provision, let's  
25 say, is not within these two exceptions mentioned in this

1 footnote, correct?

2 A That's correct.

3 Q Okay. And in fact, nowhere in the motion itself is there  
4 a reference to the observer provision, correct?

5 A I don't know, but I'll accept that.

6 Q Okay. When -- I don't think you testified to this. When  
7 did Highland agree to the observer provision?

8 A Now, remember, we agreed to ask the board to give Mr.  
9 Daugherty observer access. So the -- if it's okay, I don't  
10 recall the exact date; I can elaborate on the evolution of the  
11 provision.

12 Q Well, why don't we just agree, was it prior to the  
13 confirmation hearing or after the confirmation hearing?

14 A It would have been after.

15 Q Okay. And so just for what it's worth, if it's after the  
16 confirmation hearing, the Footnote 5 is somewhat inaccurate,  
17 correct, without -- because it does not reference the observer  
18 provision?

19 MR. MORRIS: Objection to the form of the question.

20 THE WITNESS: I would disagree with you, --

21 THE COURT: Sustained.

22 THE WITNESS: -- Ms. Dandeneau, because I don't think  
23 it's material.

24 BY MS. DANDENEAU:

25 Q Okay. Thank you. Did you review the settlement motion

1 before it was filed?

2 A Yes.

3 Q Okay. And did you review any prior drafts of the  
4 settlement motion?

5 A I don't recall. Typically, and I apologize for  
6 elaborating, but typically counsel sends me a very well-  
7 developed draft. Typically, I have comments. And so I go --  
8 I review virtually every pleading that's filed, probably every  
9 pleading, and I comment on virtually every pleading.

10 Q I have no doubt, Mr. Seery, that you get a well-developed  
11 draft, and I sympathize with Mr. Morris. Did anyone request  
12 -- did any of the prior drafts contain an express reference to  
13 the observer provision? To your recollection?

14 A Not that I recall.

15 Q And to be clear, and I believe you testified to this, Mr.  
16 Daugherty is the one who requested that the observer provision  
17 be included in the settlement agreement, correct?

18 A Yes.

19 Q And also so the record is clear, the HERA provision, and I  
20 believe this is what's stated in Footnote 5, is -- was agreed  
21 to post-confirmation as well. Is that correct?

22 A I think, the way the provision works now, in that I  
23 couldn't -- that is correct. The evolution I described  
24 earlier, I don't recall, other than he wasn't going to  
25 maintain his claims against HERA and ERA, if that started

1 before or after confirmation. Certainly, before confirmation,  
2 there was not a written agreement. There was only agreement  
3 in principle.

4 Q All right. Thank you. And at the time of the  
5 confirmation hearing, in accordance with the terms announced  
6 on the record, Mr. Daugherty already was going to get under  
7 his settlement a substantial claim against the estate pursuant  
8 to that settlement. Correct?

9 A That's correct.

10 Q Mr. Seery, I'd like to turn to the Claimant Trust  
11 Agreement. And this is a document that we have marked as  
12 Exhibit SE-2. It's at Docket 3265-2. I would represent to  
13 you and to the Court we were unable to locate a publicly-  
14 available copy of the executed form of the Claimant Trust  
15 Agreement, but this is the copy that was included in the plan  
16 supplement. I understand that there was an amendment that  
17 changed, like, two provisions that are not material to what  
18 we're going to discuss.

19 But I would ask, Mr. Seery, do you recognize this  
20 agreement? Or this form of agreement?

21 A I do recognize the form, yes.

22 Q Okay. And you are the Claimant Trustee as that term is  
23 used in this agreement, correct?

24 A (no audible response)

25 Q Okay.

1 MS. DANDENEAU: Your Honor, I would move for  
2 admission of the document that's been marked as SE-2 into  
3 evidence.

4 THE COURT: All right. Any objection?

5 MR. MORRIS: No objection.

6 THE COURT: Okay. So, --

7 MR. MORRIS: No, Your Honor.

8 THE COURT: -- it's admitted, but let's be clear  
9 where it's found on the docket.

10 MS. DANDENEAU: Your Honor, it is at 3265-2.

11 THE COURT: Okay. So that is admitted. Thank you.

12 MS. DANDENEAU: Thank you, Your Honor.

13 (Scott Ellington's Exhibit SE-2 is received into  
14 evidence.)

15 BY MS. DANDENEAU:

16 Q Mr. Seery, the Claimant Trust Agreement is the  
17 organizational document for the Claimant Trust, correct?

18 A Yes.

19 Q And you would agree with me that one of the purposes of an  
20 organizational document of an entity is to govern the  
21 management and operations of that entity, correct?

22 A Yes.

23 Q All right.

24 MS. DANDENEAU: So let's turn, Ms. Zimmerman, please,  
25 to Section 4.1. And, again, I'm going to try to spare

1 everybody from dramatic readings of these sections.

2 BY MS. DANDENEAU:

3 Q So, Section -- so just so we -- before we start, Article 4  
4 is the provision that sets forth the rights and  
5 responsibilities of the members of the Oversight Board,  
6 correct?

7 A Essentially correct, yes.

8 Q Okay. And so Section 4.1 describes the initial members of  
9 the Oversight Board, and I'm just going to ask you, and I'll  
10 ask you this for every provision: Is there anything in this  
11 section that expressly allows the appointment of a third party  
12 as an observer to the Oversight Board?

13 A I don't believe so, no.

14 Q And I believe you've talked about observation access as  
15 opposed to observer. And so we're clear, when I say observe  
16 -- well, I can ask you, is there anything in here that allows  
17 the Oversight Board to grant -- expressly allows the Oversight  
18 Board to grant observation access? So let's go with your  
19 terminology with that question.

20 A I think we can -- we can use them interchangeably. No.  
21 So, --

22 Q Okay.

23 A -- observation access, observer status, the concepts are  
24 similar and quite common in most corporations.

25 Q Thank you, Mr. Seery. That will greatly ease the

1 questioning.

2 All right. Well, then let's go to Section 4.2. I will  
3 ask you the same question. Is there anything in this Section  
4 4.2 that expressly permits the Claimant Trustee to share  
5 information with a person not associated with a member of the  
6 Oversight Board?

7 A I don't believe there was a -- it's not -- it's not a  
8 section dealing with sharing of information, but it does  
9 reference myself, who's not a member of the Oversight Board,  
10 obviously, and the Litigation Trustee, who's not a member of  
11 the Oversight Board. We do receive quite a bit of information  
12 from the Oversight Board and share information with the  
13 Oversight Board. But I don't think this provision actually  
14 deals with that.

15 Q And I believe what you're referring to is Paragraph 4.C,  
16 correct, where you as the Claimant Trustee are required to  
17 provide the Oversight Board with information sufficient to  
18 enable the Oversight Board to meet its obligations under the  
19 Claimant Trust Agreement, correct?

20 A That's, that's part of it. There's also -- the way that  
21 the structure of the board works is -- and it was highly  
22 negotiated in terms of how each of the entities or persons  
23 would function -- I'm entitled to be at Oversight Board  
24 meetings, but the Oversight Board can exclude me if it's in  
25 their reasonable determination to do so. I'm entitled to

1 bring advisors, I believe is the term, and I forgot where it  
2 is in the -- exactly in the section, but I certainly can bring  
3 my advisors.

4 Q Okay. Thank you, --

5 A The Oversight Board, once again, provided they're acting  
6 reasonably, can reasonably exclude me or my advisors.

7 Q Thank you, Mr. Seery. And now let's go to -- I was just  
8 -- Section 4.4 and 4.6, which deal with meetings of the  
9 Oversight Board. We'll start with 4.4. Is there anything in  
10 Section 4.4 that expressly permits an observer or any other  
11 third party that is not acting as a representative of the  
12 Claimant Trust, the Litigation Sub-Trust, or the Oversight  
13 Board to participate in meetings of the Oversight Board?

14 A Not that I recall.

15 Q And same question, if we can move to Section 4.6. Is  
16 there anything in Section 4.6 that expressly permits an  
17 observer or any other third party that is not acting as a  
18 representative of the Claimant Trust, the Litigation Sub-  
19 Trust, or the Oversight Board to participate in any meetings  
20 of the Oversight Board?

21 A I don't believe so.

22 Q Okay.

23 A Uh, --

24 Q And to -- I'm sorry. I did not mean to --

25 A I apologize, because I didn't read the top section. Some

1 of the former creditors have some specific reference in there,  
2 but I think that's really dealing with excluding Redeemer or  
3 Acis and/or UBS, depending on what the particular issue being  
4 discussed would be and how a quorum would work. I think that  
5 -- I don't think there's a specific provision that allows you  
6 to bring somebody else in, and that doesn't surprise me at  
7 all. I don't know that I've ever seen one.

8 Q Okay. Thank you. And just so that we're clear, at the  
9 time the Claimant Trust Agreement was drafted, those specific  
10 creditors who are referenced, those were contemplated to be  
11 members of the Oversight Board; is that correct?

12 A I believe that is correct, yes.

13 Q Okay. And by the way, when I say participate, can we  
14 agree that participate includes observing?

15 A For -- for -- if we need to distinguish, we can.

16 Q For --

17 A Yeah. I mean, typically, participating one would think  
18 would be someone who's active, has a vote, has a discussion.  
19 Observers, in my experience, whether they be creditors,  
20 whether they be regulators, whether they be large  
21 shareholders, only get to watch, unless asked something.

22 Q So, so let's talk about attend, I guess. There's nothing  
23 -- because I didn't mean to (overspoken) --

24 A Yeah, no, I'm not trying to (overspoken) the distinction.

25 Q Okay.

1 A There's nothing in the agreement that would say some third  
2 party can come in or that the board can invite some third  
3 party in, just like there's nothing in the agreement that says  
4 you -- the board could serve lunch at the meetings.

5 Q All right. Thank you, Mr. Seery. Let's skip to Section  
6 4.9. And, again, this section purports to allow the removal  
7 of a member of the Oversight Board for cause or disability.  
8 Is that -- is there anything in that section that expressly  
9 permits the Oversight Board to remove someone to whom it has  
10 granted some form of observer status?

11 A No.

12 Q Now, Section 4.10, which sets forth in detail how a  
13 successor member of the Oversight Board will be appointed  
14 following the removal, death, or resignation of a member, does  
15 this Section 4.10 expressly contain anything that would permit  
16 the Oversight Board to grant observer status to any third  
17 party?

18 A No, not that I recall.

19 Q Okay. And Section 4.12 requires each member of the  
20 Oversight Board to hold strictly confidential and not use for  
21 personal gain any confidential trust information. Is that  
22 correct?

23 A That's correct.

24 Q Okay. Is there anything in this Section 4.12 that sets  
25 forth the same requirements for an observer or another -- a

1 third party attending an Oversight Board meeting?

2 A I'm sorry, Ms. Dandeneau. I got lost in reading the  
3 section. But I apologize; I missed the question.

4 Q Oh, I'll repeat it. And it was a long question. Sorry  
5 for that. Is there anything in this Section 4.12 that sets  
6 forth the same confidentiality requirements for an observer or  
7 any other third party who is attending a meeting of the  
8 Oversight Board?

9 A I don't recall. I would expect that if an Oversight Board  
10 member brought a colleague, whether that be a junior colleague  
11 or an outside professional because they had outside counsel or  
12 expert, that that colleague or affiliate, if you will, small  
13 A, will be bound by the confidentiality that binds the member.  
14 But there's -- it doesn't deal with observer status. I don't  
15 think that's something in the document at all.

16 Q Okay. Thank you. So, so in your view, I'd like to  
17 understand how the sharing of confidential information with a  
18 third party by the Oversight Board would work. Does the  
19 Oversight Board need to make a decision to share confidential  
20 information with a third party, collectively, the Oversight  
21 Board?

22 MR. MORRIS: Objection, Your Honor. This is a  
23 hypothetical and it's being asked of a person who's not even a  
24 member of the Oversight Board.

25 THE COURT: Sustained.

1 BY MS. DANDENEAU:

2 Q Is there anything in the Claimant Trust Agreement that  
3 actually contemplates the sharing of confidential information  
4 with a third party?

5 A Not that I recall, except the sharing with professionals,  
6 which is clearly contemplated, and perhaps my employees. When  
7 I mean mine, I mean the Reorganized Debtor. It's not  
8 expressed that I recall, but employees of the Reorganized  
9 Debtor can and do attend Oversight Board meetings and they are  
10 bound by confidentiality, as am I, on confidential issues.  
11 There may be things that aren't particularly confidential that  
12 are discussed at times.

13 Q And Mr. Seery, I believe you testified that the Oversight  
14 Board in your view would impose reasonable protections if they  
15 were going to allow a third party to attend an Oversight Board  
16 meeting or observe an Oversight Board meeting. Is that  
17 correct?

18 A I apologize. I don't recall actually saying that. But I  
19 would expect such.

20 Q Okay. Thank you. Are you, sitting here today, prepared  
21 to vouch to the Oversight Board that Mr. Daugherty is likely  
22 to comply with confidentiality requirements imposed on him?

23 A No.

24 Q Now, for the sake of completeness, let's take a look at  
25 Article 10 of the Claimant Trust Agreement. Now, this allows

1 amendments to the agreement, correct?

2 A Yes.

3 Q Okay. And for anything other than clarifying nonmaterial  
4 provisions of the Claimant Trust Agreement, an amendment  
5 requires an instrument signed in writing by you as the  
6 Claimant Trustee, correct?

7 A I haven't looked at the provision in a while, but I would  
8 expect such, yes.

9 Q Okay. And an amendment to the Claimant Trust Agreement  
10 requires the unanimous approval of the Oversight Board,  
11 correct?

12 A It -- that's -- that's what it appears to say, yes. I  
13 apologize. I just haven't looked at the provision in a long  
14 time.

15 Q I'm not trying to rush you through this, so if you need  
16 time to look at it --

17 A No, that's okay. I believe you're correct.

18 Q Okay. And then, finally, an amendment requires the  
19 approval of the Bankruptcy Court, after notice and a hearing.  
20 Is that correct?

21 A A material amendment. That's correct. It seems a little  
22 odd to me, as an aside, that, depending on when this happened,  
23 whether the Court would undertake to hear that, but that's  
24 what it says.

25 Q Okay. Well, just so we're clear, it says the Oversi...

1 may amend this agreement to correct or clarify any nonmaterial  
2 provisions. And then it says, it may not otherwise be  
3 amended, et cetera, without these components. So, I believe  
4 that that's -- that is how -- how it works. I don't know if  
5 that changes your answer, Mr. Seery.

6 A No. I believe my answer is sufficient.

7 Q Okay. Now, you've previously testified, and as the  
8 observer provision states, whether Mr. Daugherty will be  
9 granted observer access and any continuing access will remain  
10 at the sole discretion of the Claimant Trust Oversight Board.  
11 Correct?

12 A Yes.

13 Q And nothing in the observer provision actually references  
14 your approval in your capacity as the Claimant Trustee for  
15 granting observer -- what I'm going to say, observer status on  
16 the Oversight Board to Mr. Daugherty. Correct?

17 A That -- that's correct. I think it's presumed, since I'm  
18 asking for it.

19 Q Okay. Have you signed anything in writing agreeing --  
20 agreeing to grant Mr. Daugherty observer access or observer  
21 status?

22 MR. MORRIS: Objection to the form of the question.

23 THE WITNESS: No, I've simply --

24 THE COURT: Overruled.

25 THE WITNESS: I'm sorry.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I simply -- I've simply signed the  
3 settlement agreement which says that I will use my reasonable  
4 efforts to request that the Oversight Board grant observer  
5 status to Mr. Daugherty, and the terms, limitations,  
6 provisions are for the Oversight Board, or even -- even  
7 granting it.

8 BY MS. DANDENEAU:

9 Q And as the Claimant Trustee, you have fiduciary duties to  
10 the Claimant Trust and its beneficiaries, correct?

11 A Correct.

12 Q And nothing in the Claimant Trust Agreement or Delaware  
13 trust law allows you to delegate those fiduciary duties,  
14 correct?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Sustained.

17 BY MS. DANDENEAU:

18 Q Nothing in the observer provision that's included in the  
19 settlement agreement references any amendment to the Claimant  
20 Trust Agreement; is that correct?

21 A Yes.

22 Q And nothing in the observer provision references the  
23 requirement for further approval of an amendment by the  
24 Bankruptcy Court after notice and a hearing; is that correct?

25 A That's correct.

1 Q Okay. And I know you testified to this already, but is  
2 there anything in the Claimant Trust Agreement that prohibits  
3 the Claimant Trust from consulting with Mr. Daugherty if he is  
4 not a member of the Oversight Board or granted some kind of  
5 observer status?

6 A I believe Mr. Morris testified to that, but the answer --

7 Q Oh, I'm sorry. I get confused sometimes when Mr. Morris  
8 testifies.

9 A No, the answer -- the answer, there's -- there is no  
10 prohibition from consulting with whomever the Oversight Board  
11 wants to consult, whether they're a professional, whether  
12 they're Claimant Trustee, Litigation Trustee, whether they're  
13 an observer, or whether they're someone on the street.

14 Q And is there anything in the Claimant Trust Agreement that  
15 prohibits the Claimant Trust from receiving information from  
16 Mr. Daugherty?

17 A No.

18 Q Now, Mr. Daugherty stopped being employed by Highland in  
19 2011; is that correct?

20 A That's my recollection, yes.

21 Q Yes. With respect to the pending actions that are being  
22 -- let's start with the Reorganized Debtor -- being pursued by  
23 Highland as the Reorganized Debtor, does the estate require  
24 any assistance from Mr. Daugherty?

25 A I apologize. I missed the first part. You said with

1 respect to the pending actions that Highland has brought.

2 Meaning litigation actions?

3 Q Yes. Mr. Seery, let me -- let me rephrase that terrible  
4 question. With respect to whatever litigation is currently  
5 pending that is being pursued by Highland as the Reorganized  
6 Debtor, as opposed to a Litigation Sub-Trust, does the estate  
7 require -- does Highland require any assistance from Mr.  
8 Daugherty?

9 A No.

10 Q Okay. And in fact, Reorganized Highland and the Claimant  
11 Trust are represented by the Pachulski firm, correct?

12 A That's correct.

13 Q And --

14 A Generally, yes.

15 Q Okay. And in your view, does the Pachulski firm require  
16 any assistance from Mr. Daugherty in connection with the  
17 matters on which it is representing the Reorganized Highland  
18 or the Claimant Trust?

19 A No. Those -- those matters are all wrapped -- packed and  
20 ready to go.

21 Q Okay. Are you familiar with the action being generally  
22 commenced by Mr. Kirschner as the Trustee of the Litigation  
23 Sub-Trust --

24 A Yes.

25 Q -- against numerous defendants, including Mr. Ellington?

1 A Yes.

2 Q Now, I will represent to you that there are certain counts  
3 -- namely, Counts 1 and 2 -- that include causes of action for  
4 the recovery of equity distributions going back as far as  
5 April of 2010. But putting those aside, would you agree with  
6 me with respect to the Kirschner action that nearly all of the  
7 relevant facts in that action arose after 2011?

8 MR. MORRIS: Objection to the form of the question.  
9 Just relevance, Your Honor.

10 THE COURT: Okay. What is the relevance?

11 MS. DANDENEAU: Your Honor, what it is going to show,  
12 and I think this is consistent with what Mr. Seery has  
13 testified, is that nobody really needs the advice of Mr.  
14 Daugherty with respect to whatever the Reorganized Debtor is  
15 doing and also with respect to whatever the Litigation Sub-  
16 Trust is doing.

17 THE COURT: What does advice of Mr. Daugherty have to  
18 do with anything? Isn't it access, observer access?

19 MS. DANDENEAU: Well, I believe that it is also  
20 having him attend -- having him attend and do whatever  
21 observers do with respect to the Oversight Committee. But I  
22 do believe that there was testimony that he might be useful in  
23 connection with certain facets of liquidating Highland's --  
24 kind of the longstanding, long-held assets. But I think it is  
25 worth at least getting -- having it recognized that there is

1 really no utility served by having the Litigation Sub-Trust or  
2 even having Highland have "access" to Mr. Daugherty.

3 THE COURT: All right. Well, I think it's of dubious  
4 relevance, but I'll allow the question.

5 Mike, how long have we been going with this cross-  
6 examination, by the way?

7 THE CLERK: Approximately 29 minutes, Judge.

8 THE COURT: Okay. Twenty-nine minutes. All right.  
9 You may proceed.

10 THE WITNESS: I think I have the gist of the  
11 question. I don't purport to understand exactly what Mr.  
12 Kirschner's strategy is on every point, but I don't think  
13 additional information from Mr. Daugherty is required for Mr.  
14 Kirschner or the Quinn Emanuel firm to pursue the cause of  
15 action. Whether he would be helpful or not for certain  
16 aspects, he may be, but I don't have specific information on  
17 that and that would depend on the give and take of what  
18 happens in the litigation.

19 And to clarify, I said earlier that Mr. Daugherty believes  
20 that he could be useful in providing advice around certain of  
21 the positions that he's familiar with that he put on. But  
22 aside from public information, which is certainly his right to  
23 receive, and some of it is available for some of the  
24 companies, he hasn't been involved with those companies for  
25 ten years, so I don't -- I don't purport to say that he is

1 necessary for me to monetize those assets.

2 Q Thank you, Mr. Seery. Now, has Mr. Daugherty been  
3 assisting the bankruptcy estate through his own  
4 investigations?

5 MR. MORRIS: Objection to the form of the question.  
6 Your Honor, we've got -- we've got two -- we've got an  
7 objection about access and we've got an objection about HERA  
8 and ERA. I don't think it's appropriate or relevant to try to  
9 get discovery for a different lawsuit here.

10 MS. DANDENEAU: Your Honor, I'm -- may I respond?

11 THE COURT: Please.

12 MS. DANDENEAU: Your Honor, first of all, this is a  
13 quote from Mr. Daugherty's joinder to the motion, where Mr.  
14 Daugherty says he's been assisting the bankruptcy estate  
15 through his own investigations. And we are particularly  
16 concerned, we've made no surprise about it, with respect to  
17 the observer -- granting of the observer status, the potential  
18 granting of the observer status, and potentially giving Mr.  
19 Daugherty access to confidential information.

20 And what we'd like to establish is whether the estate --  
21 and we're not -- I'm not going to go in a lot of detail, but  
22 this is what Mr. Daugherty has said, and we'd like to know  
23 whether he has shared information with the estate up until  
24 this point, personal nonconfi... you know, personal  
25 confidential information that is -- that's not public --

Seery - Cross

61

1 MR. MORRIS: Your --

2 MS. DANDENEAU: -- with the estate.

3 MS. DANDENEAU: Your Honor, if I may just briefly.

4 THE COURT: You may.

5 MR. MORRIS: Mr. Daugherty -- Mr. Ellington does not  
6 have standing to challenge the access. He's not a beneficiary  
7 of the trust, number one.

8 Number two, to the extent that they contend that it's a  
9 plan modification, make the argument that it's a plan  
10 modification. You know, what discussions were had, I don't  
11 understand how this is relevant. It's clear that Mr.  
12 Ellington thinks that somehow Mr. Seery is, you know, aiding  
13 and abetting, I guess, whatever wrongdoing Mr. Ellington  
14 alleges Mr. Daugherty is engaged in. It's exactly why we're  
15 trying to extricate ourselves from this. Challenge --  
16 challenge the provision. You know, we've heard the analysis  
17 and the questioning on the provision itself. But we're going  
18 very far afield, and it's just -- it's not relevant.

19 THE COURT: Okay. I agree --

20 MS. DANDENEAU: Mr. Morris, I mean, I do --

21 THE COURT: I agree we're going very far afield.  
22 This feels like it's discovery relevant to what I'm going to  
23 call the stalking action. So, anyway, I sustain the  
24 objection.

25 MS. DANDENEAU: All right. Thank you. And for

1 record, Your Honor, I just want to make clear that we are not  
2 trying to allege in any respect -- I mean, to the contrary --  
3 that the Debtor was somehow kind of in cahoots with Mr.  
4 Daugherty with respect to any of the allegations. So I do  
5 want to make that clear on the record.

6 MR. MORRIS: I appreciate that.

7 THE COURT: Okay. Anything else?

8 MS. DANDENEAU: Well, Your Honor, there are -- I'd  
9 like to ask some questions, and maybe I -- I will try to  
10 simplify them. But -- and then wrap up very quickly. And  
11 then Mr. Morris is free to object, obviously.

12 BY MS. DANDENEAU:

13 Q Mr. Seery, if prior to the execution of the settlement  
14 agreement somebody had told you that there were allegations  
15 that Mr. Daugherty had been observed outside someone's office,  
16 residence, sister's residence, father's residence, no less  
17 than 143 times, often taking photographs and video recordings,  
18 or that Mr. Daugherty had been observed at least eight times  
19 outside the home where Mr. Ellington's sister resides with her  
20 husband and children, or that Mr. Daugherty was observed at  
21 least seven times outside the home of Mr. Ellington's widower  
22 father, again, putting aside whether those -- just on the  
23 basis of those allegations, would any of those allegations  
24 have changed your view about agreeing to the inclusion of the  
25 observer provision in the settlement agreement?

1 MR. MORRIS: Objection; calls for a hypothetical.

2 THE COURT: Sustained.

3 BY MS. DANDENEAU:

4 Q Well, just so I can clarify for the record, let me ask  
5 this. Have you, Mr. Seery, have you read or has somebody  
6 explained to you the allegations that were contained in the  
7 state court petition filed against Mr. -- filed by Mr.  
8 Ellington against Mr. Daugherty?

9 A I read enough of the -- I'm sorry. Did I cut you off,  
10 John?

11 MR. MORRIS: I was just going to say yes or no, to  
12 the extent it involves attorney-client communications. But  
13 you can --

14 MS. DANDENEAU: I'm only asking for a yes or no.

15 THE WITNESS: It's hard to say yes or no. But I  
16 don't -- I don't recall (inaudible) under the state court  
17 proceedings that I -- that I know of. I have read the -- at  
18 least glanced at the remand -- removal and remand documents  
19 that have been filed in this Court.

20 BY MS. DANDENEAU:

21 Q Okay. And would you agree that one of the effects of  
22 giving Mr. Daugherty observer status could be that Mr.  
23 Daugherty will have access to confidential information that is  
24 not otherwise publicly-available?

25 A Around the assets, I don't -- I don't know what the

1 limitation -- I don't know because I don't know what the  
2 limitations, if any, the Oversight Board would put on access  
3 for Mr. Daugherty if they grant it. It would be up to them.  
4 But I would -- I would -- if there was confidential  
5 information regarding either assets or regarding litigations,  
6 we would -- I would assure and I'm sure the board would assure  
7 that confidentiality agreements are in place and that  
8 materials like that could not be released or used otherwise.

9 Q But as we sit here today, there's nothing in the Claimant  
10 Trust Agreement or the settlement agreement that provides  
11 assurance that no member of the Oversight Board will share  
12 confidential personal information with Mr. Daugherty?

13 A I don't think that's true. I think there's a specific  
14 confidentiality provision that you have in the -- in the trust  
15 agreement, and the language that we included in the settlement  
16 agreement, which was that I would request that the board grant  
17 Mr. Daugherty observer access or status, it's subject to the  
18 types of confidentiality that one would typically expect from  
19 a board-type deliberation.

20 So if one were to breach that, that would be a breach of  
21 the agreement, would certainly abuse whatever observer status,  
22 even as limited that you might have been granted. But it  
23 would also subject somebody to potential damages for breaching  
24 the agreement if it hurt the Trust.

25 Q And Mr. Seery, sitting here today -- this is my last

Seery - Cross

65

1 question -- are you prepared to recommend to the Oversight  
2 Board that they agree to grant observer status to Mr.  
3 Daugherty?

4 A I -- I don't know if I would recommend. I said I would  
5 ask, and I'll do it in good faith, and I'll provide my views  
6 as they evolve depending on the discussion we have. I  
7 certainly think a significant creditor appearing -- observing  
8 board deliberations around the monetization of assets is  
9 nothing unusual, having done this for it seems like  
10 forever. I have been an observer. I've had observers at  
11 boards that -- observers on boards that I've been on. It's a  
12 pretty typical construct, where you have assets that are being  
13 monetized, as opposed to necessarily -- or a straight board  
14 with an operating committee, although you see them as  
15 well. And I -- I don't know that the limitations we're  
16 talking about, how they would pertain, but it would depend on  
17 each thing.

18 Obviously, the sensitivity around confidentiality and  
19 attorney-client privilege and common interest related to  
20 Litigation Trustee issues and note litigation issues, et  
21 cetera, is a little bit different than the sensitivity and  
22 confidentiality around private companies and their operations,  
23 although that is still sensitive and we want to make sure it's  
24 protected.

25 Q All right. Thank you, Mr. Seery.

Seery - Redirect

66

1 MS. DANDENEAU: I have no further questions at this  
2 time.

3 THE COURT: All right. Mr. Morris, redirect?

4 MR. MORRIS: Yeah. Just a couple of quick questions.

5 REDIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Seery, in Paragraph 3, the observer access provision  
8 of the proposed settlement agreement, did Mr. Daugherty agree  
9 that he would be bound by all policies, procedures, and  
10 agreements, including confidentiality agreements of the  
11 Oversight Board, if he's given access?

12 A I don't recall the specifics of the provision in that  
13 regard, but the terms of the request would be that, if he gets  
14 it, --

15 Q All right.

16 A -- he will be bound by whatever strictures the Oversight  
17 Board puts on him. And that -- again, this is -- I understand  
18 the sensitivity by counsel, but it's a pretty common  
19 provision.

20 It's also common that an observer's access is  
21 circumscribed. It's not something where it's just sit and  
22 watch all the proceedings. For example, if there's employee  
23 discussions or how some -- the company, the Trust, might deal  
24 with certain claims or taxes or things that may not deal with  
25 or impact the observer's realization on their claim, I would

1 expect there would be limitations. There typically are.

2 Q Okay. And can you just confirm that Paragraph 3, in  
3 Paragraph 3 Mr. Daugherty agreed that he would have absolutely  
4 no right of access to Oversight Board meetings unless the  
5 Oversight Board made that determination in its sole  
6 discretion?

7 A That, that is correct. I couldn't promise him something  
8 that I can't deliver, and I wanted to make sure that I wasn't  
9 in any way limiting the rights of the Oversight Board to  
10 determine who, if anyone, could observe their deliberations.

11 Q Okay. Ms. Dandeneau took you through certain provisions  
12 of the trust agreement and asked you whether or not certain  
13 things were expressly authorized. Do you recall that?

14 A Yes.

15 Q And you're generally familiar with the trust document; is  
16 that right?

17 A I am, although clearly from my testimony not as sharp as I  
18 need to be.

19 Q Okay. Do you recall that there's anything in the trust  
20 agreement that expressly prohibits the granting of observer  
21 status to third parties?

22 A I'm quite certain there isn't.

23 Q Do you recall if there's anything in the trust agreement  
24 that expressly prohibits the sharing of information with third  
25 parties?

Seery - Redirect

68

1 A I'm quite certain there isn't.

2 Q Are you aware of anything in the trust agreement that  
3 expressly prohibits the Oversight Board from deciding that it  
4 doesn't want to grant observer access to third parties?

5 A There is not.

6 Q Okay. Is there anything that you're aware of in the trust  
7 agreement that prohibits the observer access provision in  
8 Paragraph 3 of the proposed settlement agreement?

9 A No, there isn't. And just, again, nor would there be.  
10 There are observers at boards of directors or trusts. It's  
11 common. I've never seen, never seen a corporate  
12 organizational document or trust organizational document that  
13 prohibits observers if the trustee or an oversight board or a  
14 board of directors wants to have them.

15 MR. MORRIS: Okay. I have no further questions, Your  
16 Honor.

17 THE COURT: Any recross on that redirect?

18 MS. DANDENEAU: No, Your Honor. Thank you.

19 THE COURT: All right. Thank you, Mr. Seery.

20 THE WITNESS: Thank you, Your Honor.

21 (The witness is excused.)

22 THE COURT: Mr. Morris, anything else?

23 CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

24 MR. MORRIS: Just really briefly, Your Honor. The  
25 Reorganized Debtor doesn't believe that Mr. Ellington has

1 standing to prosecute his objection because he holds no claim  
2 against the Debtor, the Reorganized Debtor, the Trust, or any  
3 aspect of the estate.

4 We believe that we've easily met the standard under 9019.  
5 We believe this settlement is fair, reasonable, and in the  
6 best interests of the estate. We believe the evidence  
7 conclusively shows that the proposed settlement is the subject  
8 of arm's-length negotiations; that after doing an exhaustive  
9 cost-benefit analysis, that the Debtor, in an exercise of its  
10 reasonable judgment, believes that the benefits of the  
11 proposed settlement greatly outweigh the costs and expenses of  
12 litigation.

13 We believe specifically that with respect to the two items  
14 that Mr. Ellington has objected to, that there's absolutely no  
15 foundation for characterizing Paragraph 3 of the settlement  
16 agreement as a plan modification. It grants absolutely no  
17 rights to Mr. Daugherty whatsoever. It simply allows the  
18 Oversight Board to exercise, in its sole discretion, whether  
19 to give him access. And if he's ever given access, it will be  
20 subject to the policies and procedures and agreements of the  
21 Oversight Board, including confidentiality.

22 HERA and ERA was an integral part of Mr. Daugherty's  
23 claim. You heard testimony from Mr. Seery that that issue was  
24 debated and morphed several times into different types of  
25 resolutions before ultimately settling on the final

1 resolution.

2 It's clear from Mr. Ellington's papers, from Mr.  
3 Daugherty's papers, that the two of them are going to continue  
4 their litigation pattern in the future whether or not the  
5 HERA/ERA aspect is part of the agreement or not. I mean, if  
6 somehow that were not part of the agreement, I don't think  
7 there's any evidence, I don't think there's any basis, and  
8 indeed, it's contrary to what both of them have said, that  
9 that would somehow end litigation between them.

10 So it doesn't really matter. What does matter, Your  
11 Honor, is that the Debtor had a very rational business reason  
12 for agreeing to that particular term, and that business reason  
13 is reflected not just in the transfer of the asset, but most  
14 importantly, in the exhibit to the settlement agreement, the  
15 HERA release.

16 So, on that basis, Your Honor, we respectfully request  
17 that the Court overrule the objection and grant the motion in  
18 its entirety. Thank you.

19 THE COURT: All right. Mr. Uebler, any closing  
20 argument from you?

21 CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

22 MR. UEBLER: Your Honor, just that Mr. Daugherty  
23 requests that the motion be approved. Thank you for your time  
24 this afternoon.

25 THE COURT: All right. Ms. Dandeneau, what would you

1 like to say as far as closing argument?

2 MS. DANDENEAU: Thank you, Your Honor.

3 CLOSING ARGUMENT ON BEHALF OF SCOTT ELLINGTON

4 MS. DANDENEAU: We fully understand that the standard  
5 for approval of a compromise under Bankruptcy Rule 9019  
6 focuses on what is in the best interest of the debtor's  
7 estate. And we know that the Court typically defers to the  
8 debtor's business judgment.

9 As outlined in our objection, though, Mr. Ellington has  
10 two principal concerns with the proposed settlement. The  
11 first raises a legal concern. Mr. Morris addressed that, his  
12 view of it, which is that Highland incorporated the Claimant  
13 Trust Agreement into its plan. The Claimant Trust Agreement  
14 is the document that governs the management and operations of  
15 the Claimant Trust. That includes the activities of the  
16 Claimant Trust Oversight Board.

17 Article 4 of the Claimant Trust Agreement has extensive  
18 provisions dealing with the appointment of the board, the  
19 replacement of members, and their rights and responsibilities.  
20 And those rights and responsibilities include fiduciary duties  
21 and a duty to keep confidential information confidential and  
22 not use it for personal gain. And nowhere in the Claimant  
23 Trust Agreement is the granting of observer status to a third  
24 party contemplated.

25 The Claimant Trust Agreement never reserved to the

1 Claimant Trust the right to invite third parties, otherwise  
2 unassociated with the Claimant Trust or the Oversight Board or  
3 the Litigation Sub-Trust, to obtain access to confidential  
4 information. And granting that kind of provision  
5 substantially deviates from the terms of the Claimant Trust  
6 Agreement.

7 Indeed, nothing in the Claimant Trust Agreement, other  
8 provisions of the plan, or even the settlement agreement even  
9 ever mentioned, much less truly defined, what an observer is.  
10 That's a significant part of the problem. We have a Claimant  
11 Trust that goes to great lengths to lay out the rights and  
12 responsibilities of all parties and to protect the Claimant  
13 Trust from breaches of confidentiality. And now what we have  
14 is really Mr. Seery's word for what will happen with an  
15 observer to the Claimant Trust, because those provisions are  
16 not included in any document.

17 What are the duties of an observer? What are the rights?  
18 What is to prevent Mr. Daugherty from accessing confidential  
19 information and then using it? And why does Mr. Daugherty  
20 even need access to confidential information?

21 Moreover, Highland would argue that the Claimant Trust has  
22 the ability to grant observer status through an amendment.  
23 Well, again, we don't believe -- I know that they're not  
24 saying that, but we don't believe an amendment can be  
25 accomplished through simply the exercise of the Oversight

1 Board's sole discretion. Among other things, an amendment to  
2 the Claimant Trust Agreement requires notice and a hearing  
3 before this Court for this Court to expressly approve that  
4 provision.

5 The second issue, Your Honor, goes to the issue of whether  
6 Highland was fully and properly informed of the relevant facts  
7 in exercising its business judgment to agree to the inclusion  
8 of the observer provision and the HERA provision. The effect  
9 of both of these provisions is to give Mr. Daugherty, who has  
10 been accused of stalking Mr. Ellington and family members and  
11 other people closely associated with Mr. Ellington, including  
12 children, of giving Mr. Daugherty access to information about  
13 Mr. Ellington that is not otherwise publicly available. And  
14 there is nothing that we've heard today that provides  
15 assurance that the Oversight Board will not provide that  
16 access to Mr. Daugherty.

17 No one disputes, at least with respect to the observer  
18 provision, that that is a -- that is a significant potential  
19 effect. And Mr. Daugherty himself has stated that he wants  
20 the HERA equity so he can access otherwise-privileged  
21 communications between HERA and its counsel. Those are also  
22 likely to include confidential information.

23 And I recognize Highland sits here today and says, we had  
24 no idea when we signed, our hands are tied, well, this doesn't  
25 really hurt Highland's estate. Should the Court, which is a

1 court of equity, really allow a settlement to be approved when  
2 one of the purposes of two provisions that were added after  
3 the agreement in principle is to give an alleged stalker  
4 better access to his victims? Should the Court really allow a  
5 settlement to be approved when Mr. Daugherty insisted on these  
6 provisions that never disclosed to Highland what his so-called  
7 investigations of Mr. Ellington and others entailed?

8 Maybe Highland decided to humor Mr. Daugherty, and maybe  
9 Highland decided it just wanted to put Mr. Daugherty and all  
10 his litigation against Highland behind it. We get that. But  
11 did Highland really intend to do so in a manner that could  
12 pose risk to individuals?

13 We would respectfully submit, Your Honor, that even if  
14 Highland was humoring Mr. Daugherty, this is no laughing  
15 matter.

16 And moreover, shouldn't this Court question why Mr.  
17 Daugherty requested these provisions? We've heard no credible  
18 explanation for why Mr. Daugherty needed the observer  
19 provision as a result of the so-called revelations following  
20 the confirmation hearing. I mean, we know that the only  
21 effect on the estate from the Sentinel -- so-called Sentinel  
22 transaction was that Highland agreed to give UBS a larger  
23 claim. But Highland also agreed to give Mr. Daugherty a  
24 larger claim following those "revelations."

25 And if Mr. Daugherty, by the way, is not willing to do a

1 settlement with Highland unless the observer provision is  
2 included, what does that tell us about Mr. Daugherty and his  
3 motivations?

4 We would respectfully submit, Your Honor, that Mr.  
5 Daugherty was less than candid with Highland Capital in  
6 requesting these provisions. Highland should have the  
7 opportunity to reject those provisions in light of the  
8 allegations, or at least have the opportunity to assure itself  
9 and to assure the Oversight Board, by whatever means it deems  
10 necessary, that the allegations are not a concern before  
11 Highland is bound to the terms of this settlement agreement.

12 Accordingly, Your Honor, so long as the observer provision  
13 and the HERA provision remain in the settlement agreement, we  
14 would respectfully ask Your Honor to refuse to approve  
15 Highland's settlement with Mr. Daugherty.

16 MR. MORRIS: Your Honor, can I have 15 seconds?

17 THE COURT: Fifteen seconds. Timer's on.

18 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

19 MR. MORRIS: Okay. I think the -- I think the  
20 rebuttal is to simply point Ms. Dandeneau to the two questions  
21 she asked Mr. Seery, and that is, is there anything that  
22 prohibits the members of the Oversight Board from consulting  
23 with Mr. Daugherty outside a meeting? Mr. Seery testified no.

24 Mr. Seery was asked whether there was anything that  
25 prevented Oversight Board members from receiving information

1 from third parties outside of the Oversight Board meeting.

2 Mr. Seery said no.

3 That's it. They -- this is form over substance. They can  
4 do exactly what she's trying to stop outside of -- there's  
5 just no substance here. There's no reason for an amendment.  
6 There is no plan modification. Thank you.

7 THE COURT: All right. Thank you.

8 All right. This will be the Court's ruling on the  
9 Reorganized Debtor's motion for an order approving its  
10 proposed settlement with Patrick Daugherty.

11 First, the Court has jurisdiction over this contested  
12 matter pursuant to 28 U.S.C. Section 1334, and this is a core  
13 proceeding under 28 U.S.C. § 157(b). Bankruptcy Rule 9019 is  
14 the governing rule, as well as a multitude of cases, including  
15 *AWECO*, *Foster Mortgage*, *Jackson Brewing*, and *TMT Trailer* from  
16 the U.S. Supreme Court.

17 What those cases dictate is that a bankruptcy court, when  
18 presented with a proposed settlement, should look at is it  
19 fair and equitable and in the best interest of the estate,  
20 when considering the probability of success if there were to  
21 be further litigation, with due consideration of uncertainty  
22 of law and fact; the complexity and likely duration of the  
23 litigation and any attendant expense and delay; and all other  
24 factors bearing on the wisdom of the compromise, keeping in  
25 view at all times the paramount interests of creditors, with

1 deference to their reasonable views.

2 Here, the Court obviously just -- well, I'm going to say  
3 that reasonable notice has been given of this proposed  
4 compromise. The motion has been on file since December 8,  
5 2021, so close to three months. And during that time frame,  
6 we only had the one objection of Scott Ellington, who is the  
7 former general counsel of Highland and holds no claim as a  
8 creditor in this case. At one time, he had pending proofs of  
9 claim, but they have been disallowed.

10 So, with regard to the Ellington objection, we've talked  
11 about standing or no standing. I am of the view that he does  
12 not have standing, either statutory or constitutional. It  
13 would not appear to be that he is a person affected by the  
14 settlement in that he does not have a claim that remains  
15 against the estate. He does not seem to qualify as a person  
16 aggrieved under case law interpreting that standard.

17 But if I'm wrong about this, I nevertheless overrule the  
18 objection as having no merit. This Court is in a unique  
19 position to evaluate the bona fides of the settlement, that  
20 being that the Court has had many hours of court time in which  
21 it has seen evidence and heard argument from Patrick  
22 Daugherty.

23 Significant, in the fall of 2020, there was a lengthy  
24 multi-hour hearing on what we call a Rule 3018 motion to  
25 estimate Mr. Daugherty's claim for voting purposes, for plan

1 voting purposes. In hindsight, I cannot remember how many  
2 hundreds of pages of exhibits I looked at in that multi-hour  
3 hearing, but after that multi-hour hearing this Court ruled, I  
4 think much to the Debtor's dismay and maybe other party in  
5 interest dismay, that Mr. Daugherty should be given a claim  
6 for voting purposes in the amount of \$9,134,019.

7 Of course, that was an estimation based on some evidence  
8 but not all evidence. But again, it puts the Court in a  
9 unique position today to not simply look forward on how on how  
10 this Court might rule if there was litigation on the remaining  
11 proof of claim and how a Court of Appeals might rule; I've  
12 actually seen a lot of evidence.

13 So, based on that, I do find the settlement to be  
14 certainly within the range of reasonableness, and fair and  
15 equitable and in the best interest of the estate.

16 Again, despite what the Court earlier ruled on the 3018  
17 motion, Daugherty is going to be given an \$8.25 million  
18 general unsecured claim, a subordinated general unsecured  
19 claim of \$3.75 million, a lump sum payment of \$750,000 cash in  
20 the short term, and then the various releases and transfer of  
21 HERA and ERA to Daugherty, as well as this new provision that  
22 -- to make sure I've got the wording -- Debtor will use  
23 reasonable efforts to petition the Oversight Board to give  
24 Daugherty observer access.

25 I find this all, again, to be within the range of

1 reasonable. The testimony was credible that there had  
2 been not just arm's length but hard-fought negotiations over a  
3 very long period of time. Again, it's been a year, or 13  
4 months, almost, since the settlement was orally announced.  
5 The testimony was credible that there were many drafts, many  
6 written drafts of the settlement documents that have gone back  
7 and forth since the oral announcement.

8 With regard to the modifications that are objected to  
9 here, the observer access to the Oversight Board that may or  
10 may not actually happen and the transfer of Highland's  
11 interests in HERA and ERA, and then I guess there was a slight  
12 increase in the subordinated unsecured claim, none of these,  
13 in this Court's view of the evidence and testimony, are  
14 materially different from what was orally announced. But more  
15 importantly, they certainly don't rise to the level of plan  
16 modifications.

17 And I will add just another word or two about this  
18 observer access that has been such a trouble spot for Mr.  
19 Ellington. If this is granted, not only does it not seem  
20 materially inconsistent with what might be construed to be  
21 allowed under the Claimant Trust Agreement, but during the  
22 hearing I couldn't help but think about a Bankruptcy Code  
23 statute that I wondered if anybody was going to mention. No  
24 one did. But it's 1102(b)(3). Okay?

25 So the bankruptcy nerds on the WebEx will remember that in

1 October 2005 1102(b)(3) was added to the Bankruptcy Code. And  
2 it's a provision that deals with official committees of  
3 unsecured creditors during the pendency of the Chapter 11. So  
4 it technically doesn't apply to the Oversight Board, this  
5 post-confirmation Oversight Board. But it provides,  
6 1102(b)(3), in case you don't have it in front of you, that a  
7 committee, meaning an official unsecured creditors committee,  
8 shall, quote, provide access to information for creditors who  
9 hold claims of kinds represented by that committee and are not  
10 appointed to the committee. It shall solicit and receive  
11 comments from the creditors that I just described, and be  
12 subject to a court order that compels any additional report or  
13 disclosure to be made to creditors described in Subparagraph  
14 A.

15 So I guess my point is, even though we're in a post-  
16 confirmation phase, what we're dealing with is an oversight  
17 board that basically substitutes in many respects for an  
18 official creditors committee when you're in a post-  
19 confirmation stage of a Chapter 11. And if Mr. Daugherty is  
20 given access to deliberations, meetings, information of the  
21 Oversight Board, it certainly doesn't feel offensive to me,  
22 because in a pre-confirmation stage we have a Bankruptcy Code  
23 section that is designed to give access to creditors like Mr.  
24 Daugherty. And certainly, you know, we see protocol orders  
25 all of the time in Chapter 11s where, you know, people will be

1 worried, okay, yes, we have to give access, but we want to  
2 require this person to sign confidentiality agreements if  
3 there's something confidential about the information.

4 The point is, there are workarounds to deal with concerns  
5 about confidentiality and sensitive information.

6 So not only do I determine that this observer access  
7 concept is not by any stretch something that should be viewed  
8 as a plan modification, but it is within the spirit of the  
9 Claimant Trust Agreement, it doesn't run grossly afoul, or  
10 afoul, I think, of anything in there. And, again, it's just  
11 observer status. And it seems to be consistent also with the  
12 spirit of this provision of the Bankruptcy Code I just cited.

13 So the Court reserves the right to supplement and amend in  
14 the written form of order. I direct, Mr. Morris, you to  
15 submit a form of order, but I do hereby approve the compromise  
16 as presented to me.

17 All right. Well, we do have one other matter on the  
18 calendar, as I mentioned in the beginning. It is in the  
19 adversary *Ellington v. Daugherty*, Adversary 22-3003. This was  
20 a routinely-set status conference after removal. Okay? This  
21 was a state court action that was removed by Mr. Daugherty's  
22 counsel to the Bankruptcy Court. And we did here what we  
23 always do: Roughly 30 days after removal, we set a status  
24 conference to see do we need a scheduling order, what kind of  
25 case matters do we need to address, and are we going to have

1 consent to Bankruptcy Court adjudication or are we going to  
2 have a motion for remand.

3 So I don't know what we're going to attempt to accomplish  
4 here because later in this month we have set a hearing on Mr.  
5 Ellington's motion for remand and abstention. So I'll ask  
6 counsel, did you all view this setting as something that, you  
7 know, we needed to address issues on, or is it premature  
8 before we have the hearing on the motion for remand and  
9 abstention?

10 MR. YORK: Your Honor, this is Drew York from Gray  
11 Reed. I represent Mr. Daugherty in the adversary action. And  
12 I agree with the Court that it is, based upon the motion to  
13 abstain and remand that was filed, it's premature. We set the  
14 status conference at the Court's request immediately after we  
15 filed the removal notice. I think we can address all of the  
16 issues at the hearing at the end of the month.

17 THE COURT: All right. Ms. --

18 MS. DANDENEAU: Your Honor?

19 THE COURT: Go ahead.

20 MS. DANDENEAU: We agree with Mr. York and the Court,  
21 Your Honor.

22 THE COURT: Okay. Well, so I guess we will see you  
23 at the end of the month. I think, what is it, maybe March  
24 28th, something like that? March 29th?

25 MS. DANDENEAU: I believe it's March 29th.

1 THE COURT: Okay. And you know that I tend to  
2 sometimes share my views just to see if it will spur a fit of  
3 reasonableness or encourage people to settle or walk away.  
4 I'm pretty exasperated with that attempt in this case. But  
5 this litigation is -- I'm going to call it the stalking  
6 lawsuit. Okay? Every time -- I don't know how much longer it  
7 will be in my court, but as long as it's in my court I'm going  
8 to call it what it is, a stalking lawsuit. It is one grown  
9 man accusing another grown man of stalking. You know, it's  
10 just embarrassing to me, and it should be embarrassing to  
11 those involved.

12 Now, I have read the lawsuit and I have read that Mr.  
13 Ellington accuses Mr. Daugherty of driving by his house,  
14 driving by his father's house, driving by his sister's house,  
15 driving by his office, 143 sightings, he's taking pictures.  
16 And you know, if that's true, again, that's embarrassing. If  
17 -- I don't even know what to say except this is embarrassing.  
18 One grown man accusing another grown man of stalking. Okay?  
19 A statute, by the way, that was designed to protect, you know,  
20 ex-wives, girlfriends, battered women, from abusive men. You  
21 know, gender doesn't matter, but wow. It's just -- I don't  
22 know what to say except people should be embarrassed, and so  
23 that's what I'm going to say.

24 I don't know if it's going to make a whit of difference in  
25 anyone's litigation posture. But we'll come back on March

1 29th and we'll do what we need to do on the motions before the  
2 Court.

3 (Proceedings concluded at 3:41 p.m.)

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CERTIFICATE

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

**/s/ Kathy Rehling**

**03/07/2022**

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

INDEX

1		
2	PROCEEDINGS	3
3	OPENING STATEMENTS	
4	By Mr. Morris	5
	By Mr. Uebler	19
5	By Ms. Dandeneau	19
6	WITNESSES	
7	Reorganized Debtor's Witnesses	
8	James P. "Jim" Seery, Jr.	
	- Direct Examination by Mr. Morris	23
9	- Cross-Examination by Ms. Dandeneau	39
10	- Redirect Examination by Mr. Morris	66
11	EXHIBITS	
12	Debtor's Exhibits at Docket 3270	Received 6
13	Scott Ellington's Exhibit SE-2	Received 45
14	CLOSING ARGUMENTS	
15	By Mr. Morris	68
	By Mr. Uebler	70
16	By Ms. Dandeneau	71
	By Mr. Morris	75
17		
18	RULINGS	
19	<u>19-34054-sgj</u>	
20	Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith [3088] - <i>Granted</i>	76
21		
22	Reorganized Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions [3199] - <i>Court Approved Motion at Docket 3199 in Chambers Prior to Hearing</i>	--
23		
24		
25		

INDEX  
Page 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

RULINGS, cont'd.

22-3003-sgj

Status Conference (Notice of Removal)

81

END OF PROCEEDINGS

84

INDEX

85-86