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

In re:

Case No. 19-34054

HIGHLAND CAPITAL MANAGEMENT, L.P.

Chapter 11

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03003-sgj

vs.

**JAMES DONDERO, NANCY DONDERO,
 AND THE DUGABOY INVESTMENT TRUST,**

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03004-sgj

vs.

**HIGHLAND CAPITAL MANAGEMENT
 FUND ADVISORS, L.P.,**

Defendant.



HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03005-sgj

NEXPOINT ADVISORS, L.P., JAMES
DONDERO, NANCY DONDERO, AND THE
DUGABOY INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03006-sgj

HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC., JAMES DONDERO, NANCY
DONDERO, AND THE DUGABOY
INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adv. Proc. No. 21-03007-sgj

HCRE PARTNERS, LLC (n/k/a NexPoint Real
Estate Partners, LLC), JAMES DONDERO,
NANCY DONDERO, AND THE DUGABOY
INVESTMENT TRUST,

Defendants.

**DEFENDANTS’ MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT
AGAINST PLAINTIFF’S SUPPLEMENTED NOTICE OF ATTORNEYS’ FEES**

COMES NOW, Defendants James Dondero, NexPoint Advisors, L.P., Highland Capital Management Services, Inc., Highland Capital Management Fund Advisors, L.P., and HCRE Partners, LLC, the Defendants in the above-captioned and related adversary proceedings, pursuant to Northern District of Texas Local Rule 56.7, and hereby submit this *Motion for Leave to*

**DEFENDANTS’ MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT AGAINST
PLAINTIFF’S NEWLY SUPPLEMENTED NOTICE OF ATTORNEYS’ FEES – Page 2**

Supplement its Argument Against Plaintiff's Supplemented Notice of Attorney's Fees (Defendants' "Motion", Plaintiff's "Motion for Leave", and the Court's "Order"). Defendants would show the Court as follows:

I. BACKGROUND

After obtaining a favorable ruling at summary judgment, Plaintiff filed its *Notice of Attorneys' Fees Calculation and Backup Documentation* on August 5, 2022, claiming almost \$2,800,000 in attorneys' fees and costs incurred throughout this litigation.¹ Defendants pointed out what appeared to be a math error because the total of the invoices provided was roughly \$400,000 less than the \$2.8 million that Plaintiff sought. Plaintiff responded, contending that the \$400,000 was not a math error, it was simply a mistake in the supporting documentation submitted (or rather, not originally submitted) (the "New Bills"). Faced with its error, Plaintiff filed a Motion for Leave to introduce the New Bills into the evidentiary record. Over Defendants' Objection, the Court granted Plaintiff's Motion for Leave (the Court's "Order"). However, the Court's Order precluded Defendants from challenging the New Bills, stating only that Defendants face "no prejudice[.]" and precluded Defendants' ability to comment on the New Bills because Defendants "chose simply to oppose the Motion rather than comment on the [New Bills][.]"² Defendants now file their own Motion requesting leave from the Court to allow Defendants to supplement their argument against the New Bills – which total roughly \$400,000.00 – because Defendants could not formally comment on invoices *which had not yet been admitted into evidence*.³

¹ Adv. Pro. 21-03003-sgj [Dkt. 197]; Adv. Pro. 21-03004-sgj [Dkt. 169]; Adv. Pro. 21-03005-sgj [Dkt. 214]; Adv. Pro. 21-03006-sgj [Dkt. 219]; Adv. Pro. 21-03007-sgj [Dkt. 214].

² *Order Granting [Plaintiff's] Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*, p. 4, Adv. Pro. 21-03003-sgj [Dkt. 212]; Adv. Pro. 21-03004-sgj [Dkt. 181]; Adv. Pro. 21-03005-sgj [Dkt. 229]; Adv. Pro. 21-03006-sgj [Dkt. 234]; Adv. Pro. 21-03007-sgj [Dkt. 229].

³ Defendants also file this Objection to preserve the issue for appeal.

II. ARGUMENT

Defendants are victims of a procedural misstep committed by Plaintiff. Plaintiff's Motion for Leave was just that: a procedural mechanism under Northern District of Texas Local Rule 56.7 by which Plaintiff sought to include its additional invoices as *supplemental evidence*. Until such supplemental materials are included in the record (i.e.: until this Court ruled on Plaintiff's Motion for Leave), those supplemental materials simply are *not yet evidence*. Thus, Defendants' lack of "comment[s] on the invoices" should not come as any surprise, since, at the time Defendants responded to Plaintiff's Motion for Leave, the additional invoices were not evidence. Now, because the Court has granted Plaintiff's Motion for Leave, the supplemental invoices *are* evidence, and Defendants seek leave from the Court in order to provide comments regarding the supplemental invoices. The Court disproportionately chides Defendants for allegedly not strictly following procedural rules (while allowing Plaintiff wide latitude), causing Defendants to be cautious in taking the kind of shortcuts that the Court now says Defendants should have taken, such as commenting on documents not yet in evidence.

III. DEFENDANTS' COMMENTS TO PLAINTIFF'S SUPPLEMENTAL EVIDENCE

Defendants provide this Court with supplemental comments to Plaintiff's additional billing invoices for the sake of efficiency. Put plainly, Plaintiff's supplemental bills further reflect that Plaintiff's law firm of Pachulski, Stang, Ziehl & Jones ("PSZJ") charged rates far in excess of the customary rates in the Northern District of Texas, and are therefore unreasonable for the same reasons briefed in *Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*, Section II.B.6 [Dkt. 204].

Again, the "relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits," and the relevant market here is Dallas,

Texas.⁴ When compared to Plaintiff's local counsel, Hayward PLLC, PSZJ almost triples Hayward's fee rates. Hayward's Dallas, Texas office charged between \$400 and \$450 per hour on this case. PSZJ, on the other hand, having offices in Los Angeles, California, and New York, New York, charged rates ranging from \$460 an hour (already more expensive than Hayward's highest rates) to **\$1,265** per hour.

The decision to reduce an out-of-market attorney's fees to match those of the community in which the district court sits is soundly within the discretion of this Court. *See Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir. 2000) (trial court reducing fees of Washington, D.C. attorney to match those normally charged in the Dallas, Texas market was not an abuse of discretion). This Court should do the same as the trial court in *Hopwood* and reduce PSZJ's coastal rates to those consistent with the Dallas market.

Along with being well-above the customary hourly rates charged in the Dallas community, Plaintiff's New Bills are excessive.⁵ "[P]laintiffs seeking attorney's fees are charged with the burden of showing the reasonableness of the hours bills, and therefore, are also charged with proving that the exercised billing judgment[,] . . . [which] requires documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant. The proper remedy for omitting evidence of billing judgment does not include a denial of fees but, rather, a reduction of the award by a percentage intended to substitute for the exercise of billing judgment." *Saizan v. Delta Concrete Products Co., Inc.*, 448 F.3d 795, 799 (5th Cir. 2006) (internal citations omitted) (affirming the district court's decision to reduce a fee award based on plaintiff's failure to establish proper billing judgment).

⁴ *Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002).

⁵ *See Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*, Section II.A.2 for a discussion of the two-step lodestar method of determining fees.

Here, just *one* of Plaintiff's attorneys – associate Hayley Winograd – spent 44.8 hours drafting a response to Defendant NexPoint's *Notice and Objection . . .to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines*.⁶ At that attorney's rate of \$750 per hour (about 40% of her supervising partner John Morris' hourly rate of \$1,265 per hour), Plaintiff incurred \$33,600 for its attorney to draft a single response, not even considering Morris' fee to review Winograd's work. Ultimately, that brief was only 25 pages in length, with 12 of the 25 pages consisting of factual background.⁷

Furthermore, Winograd and paralegal La Asia Canty spent a combined 48.9 hours to draft an "objection and response to HCMFA motion for reconsideration[.]" with Winograd billing 35 hours at her coastal rate of \$750 per hour, and Canty billing 13.9 hours at her coastal paralegal rate of \$495.00 per hour.⁸ Plaintiff incurred \$33,130.50 for Winograd and Canty to draft that objection, again not considering Morris' fee to review their work. Based on the time entries alone, Defendants cannot directly identify what brief (if any was filed) is the product of Winograd's and Canty's 48.9 hours. Regardless, Plaintiff fails to provide any explanation for this excessive and duplicative billing for straightforward briefings, and only one brief was located based on Plaintiff's time entries.

It is not merely these entries that are at issue, in addition to the issues raised in Defendants original objection, Defendants were generous in their review, thinking that Plaintiff's total bill was \$400,000 less than it is now claiming. If that had been known at the time, Defendants' scrutiny would have been greater.

⁶ See Motion for Leave, Ex. A-1, throughout; see also Adv. Pro. 21-03005-sgj [Dkt. 148].

⁷ See [Plaintiff's] *Brief in Support of its Objection and Response to Objections to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines*, Case 3:21-cv-00881-X [Dkt. 38].

⁸ See Motion for Leave, Ex. A-1, throughout.

IV. REQUEST FOR RELIEF

Defendants object to Plaintiff's proposed award of attorneys' fees and costs based on its New Bills. Defendants request that the Court grant their Motion for Leave, and reduce any award of attorneys' fees to correspond with hourly rates normally charged in Dallas, Texas, as evidenced by local counsel Hayward's rates. Additionally, or in the alternative, Defendants request that the Court reduce any award of attorneys' fees by an amount that excludes any excessive time billed.

Dated: November 2, 2022

Respectfully submitted,

/s/ Michael P. Aigen

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Advisors, L.P.*

CERTIFICATE OF CONFERENCE

I hereby certify that on October 28, 2022, I conferred with counsel for Plaintiff, John Morris, regarding the substance of the foregoing Motion. Counsel for Plaintiff stated that Plaintiff opposes the relief requested in this Motion.

/s/ Michael P. Aigen

Michael P. Aigen

CERTIFICATE OF SERVICE

I certify that on November 2, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen

Michael P. Aigen

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

In re:

Case No. 19-34054

HIGHLAND CAPITAL MANAGEMENT, L.P.

Chapter 11

Plaintiff.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03003-sgj

vs.

JAMES DONDERO, NANCY DONDERO, AND
THE DUGABOY INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-03004-sgj

vs.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.,

Defendant.

Accordingly,

IT IS HEREBY ORDERED that:

Defendants are allowed to supplement their pleadings to raise additional arguments related to the New Bills.

END OF ORDER