

**No. 21-10219**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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*In re: James D. Dondero*

**Petitioner.**

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On Petition for Writ of Mandamus to the United States District Court For the  
Northern District of Texas, Civil Action No. 3:21-CV-001320E  
*Honorable Ada Brown, District Judge*

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**APPENDIX TO RESPONSE TO PETITION FOR WRIT OF MANDAMUS**

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L.P.*



## Appendix Table of Contents

ECF No.	Title of Document	Appendix Page Numbers
Adv. Dkt. 1	Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief	Appx. 1
Adv. Dkt. 2	Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero	Appx. 16
N/A	Hearing Transcript, dated December 10, 2020	Appx. 25
Adv. Dkt. 10	Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero	Appx. 83
Adv. Dkt. 24	James Dondero's Emergency Motion to Modify Temporary Restraining Order	Appx. 86
Adv. Dkt. 29	Notice of Withdrawal	Appx. 93
Adv. Dkt. 48	Plaintiff's Motion for an Order Requiring Appellant to Show cause Why He Should Not Be Held in Civil Contempt for Violating the TRO	Appx. 95
N/A	Hearing Transcript, dated January 8, 2021	Appx. 104
Adv. Dkt. 59	Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero	Appx. 309
Adv. Dkt. 60	Notice of Appeal as of Right or, Alternatively, Notice of Appeal With Motion for Leave to Appeal	Appx. 314
Civil Dkt. 2-1	Appellant James Dondero's Motion for Leave to Appeal	Appx. 323
Civil Dkt. 5	Debtor's Opposition to James Dondero's Motion for Leave to Appeal	Appx. 334
Civil Dkt. 8	Appellant James Dondero's Reply in Support of Emergency Motion for Expedited Appeal and Motion for Leave to Appeal	Appx. 337
Civil Dkt. 9	Memorandum Opinion and Order	Appx. 348

Dated: March \_\_\_\_, 2021

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*/s/ Zachary Z. Annable*

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*Counsel for Plaintiff Highland Capital Management, L.P.*

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Adversary Proceeding No.
Plaintiff,	§	_____
vs.	§	
JAMES D. DONDERO,	§	
Defendant.	§	

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



**PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.’S  
VERIFIED ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF**

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Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Plaintiff” or the “Debtor”), by its undersigned counsel, files this *Original Complaint* (the “Complaint”) against defendant Mr. James D. Dondero ( “Defendant” or “Mr. Dondero”) seeking preliminary and permanent injunctive relief pursuant to sections 105(a) and 362 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of its Complaint, the Debtor alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

**PRELIMINARY STATEMENT**

1. Mr. Dondero is the Debtor’s former President and Chief Executive Officer, having surrendered those positions in January 2020 as part of a “corporate governance” settlement approved by the Court. The settlement also resulted in, among other things, the imposition of an independent board of directors at Strand Advisors, Inc., the Debtor’s general partner, with sole authority to oversee the Debtor’s operations, management of its assets, and bankruptcy proceedings.

2. While Mr. Dondero resigned as an officer, he continued to serve as a portfolio manager and employee of the Debtor until October 2020, when the Board<sup>2</sup> asked for his resignation due to certain actions taken by Mr. Dondero that were adverse to the Debtor’s estate. Regrettably, since his resignation, Mr. Dondero interfered with the Debtor’s operations by intervening to halt certain trades that were authorized by the Debtor’s CEO—while issuing warnings to certain of the Debtor’s employees. In addition, promptly after the Debtor exercised its right to demand payment

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<sup>2</sup> Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

from Mr. Dondero and certain of his affiliates on almost \$30 million of Demand Notes, Mr. Dondero sent a threatening text message to Mr. James R. Seery, Jr. (“Mr. Seery”), the Debtor’s CEO and CRO that said simply: “Be careful what you do – last warning.”

3. Mr. Dondero cannot be permitted to directly (or indirectly through his corporate entities or anyone else acting on his behalf) control, interfere with, or even influence the Debtor’s business and operations or threaten or intimidate the Debtor or any of its directors, officers, employees, professionals, or agents.

4. The Debtor has therefore commenced this adversary proceeding to enjoin Mr. Dondero from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Defendant’s counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Defendant; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor’s business, including but not limited to the Debtor’s decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>3</sup>

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

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<sup>3</sup> The Debtor intends to separately move for a temporary restraining order seeking the same relief.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

7. This adversary proceeding is commenced pursuant to Bankruptcy Rules 7001 and 7065, Bankruptcy Code sections 105(a) and 362, 28 U.S.C. §§ 2201 and 2202, and applicable Delaware law.

### **THE PARTIES**

8. Plaintiff is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Upon information and belief, Defendant is an individual residing in Dallas, Texas. Mr. Dondero is the co-founder of the Debtor and was the Debtor's President and Chief Executive Officer until his resignation on January 9, 2020.

### **CASE BACKGROUND**

10. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

11. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch (collectively, "UBS"), and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

12. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].<sup>4</sup>

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<sup>4</sup> All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

13. The Debtor has continued to operate and manage its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in this chapter 11 case.

### **STATEMENT OF FACTS**

**A. An Independent Board Is Appointed to Oversee the Debtor’s Affairs; Mr. Dondero’s Role Becomes Limited and Subject to the Board’s Oversight; and Mr. Dondero Is Later Asked to Resign**

14. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the “Settlement Order”).

15. As part of the Settlement Order, this Court also approved a term sheet [Docket No. 354-1] (the “Term Sheet”) between the Debtor and the Committee pursuant to which Mr. Seery, Mr. John S. Dubel, and Mr. Russell Nelms (collectively, the “Independent Directors”), were appointed to the board (the “Board”) of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner.

16. As required by the Term Sheet, on January 9, 2020, Mr. Dondero resigned from his roles as an officer and director of Strand and as the Debtor’s President and Chief Executive Officer.

17. While resigning from those roles, Mr. Dondero remained an unpaid employee of the Debtor and retained his title as portfolio manager for each of the investment vehicles and funds managed by the Debtor. However, pursuant to the Term Sheet, Mr. Dondero’s authority was subject to oversight and ultimately termination by the Independent Board:

Mr. Dondero’s responsibilities in such capacities shall in all cases be as determined by the Independent Directors . . . [and] will be subject at all times to the supervision,

direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination.

18. Although ultimate decision-making authority remained with the Board, by resolution passed on January 9, 2020, the Board authorized Mr. Seery to work with the Debtor's traders and Mr. Dondero with respect to certain of the Debtor's assets where Mr. Dondero remained portfolio manager.

19. During the pendency of the Debtor's bankruptcy case, it became apparent that it would be more efficient and lead to better financial results to have a traditional corporate-management structure oversee the Debtor's operations and assets. Consequently, after due deliberation, the Board determined that it was in the best interests of the Debtor's estate to appoint Mr. Seery as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). This Court approved Mr. Seery's appointment as CEO and CRO on July 16, 2020. [Docket No. 854].

20. Mr. Seery's appointment as CEO and CRO formalized his role and authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its managed investment vehicles, funds, and subsidiaries. Mr. Seery routinely carried out such responsibilities, particularly after the seizure by Jefferies of the Select fund equity account managed by Mr. Dondero as a result of Select's failure to post margin.

21. On August 12, 2020, the Debtor filed its *Plan of Reorganization* [Docket No. 944] (as subsequently amended, the "Plan"). The Plan provides for, among other things, the monetization of the Debtor's assets for the benefit of the Debtor's creditors. Also in August 2020, the Debtor entered into a mediation with certain of its creditors which resulted in, among other things, a settlement with Josh and Jennifer Terry and Acis.

22. After the Acis settlement was publicly announced, Mr. Dondero voiced his displeasure with not just the terms of the Acis settlement, but that a settlement had been reached at all. On October 5, 2020, Mr. Dondero objected [Docket No. 1121] to the Debtor’s motion seeking approval of the Acis settlement, thereby creating an actual conflict with the Board and the Debtor.

23. In addition, the Dugaboy Investment Trust—Mr. Dondero’s family trust—continued to press its proof of claim alleging that the Debtor, and by extension the Board and Mr. Seery, had mismanaged Highland Multi Strategy Credit Fund, L.P. (“MSCF”) with respect to the sale of MSCF’s assets in May of 2020. *See, e.g.*, Proof of Claim No. 177; Docket No. 1154.

24. The Debtor concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity while taking positions adverse to the interests of the Debtor’s estate. Thus, on October 2, 2020, Mr. Dondero was asked to resign as a portfolio manager at the Debtor and from any roles that he had at MSCF.

25. Mr. Dondero resigned from his positions with the Debtor on October 9, 2020.

**B. Mr. Dondero Interferes with the Debtor’s Business and Instructs and Threatens Certain of the Debtor’s Employees**

26. Since tendering his resignation, Mr. Dondero has interfered with the Debtor’s operations and the management of the assets under its control, and he has otherwise acted directly and through entities he controls to improperly exert pressure on certain of the Debtor’s employees.

27. The Debtor serves as the servicer, portfolio manager, or equivalent of certain pooled collateralized loan obligation vehicles (collectively, the “CLOs”). The Debtor’s sole client in these matters is the CLO issuer and not any individual shareholder or noteholder of the CLO.

28. NexPoint Advisors, L.P. (“NexPoint”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA,” and together with NexPoint, the “Advisors”) are investment advisors

directly or indirectly controlled by Mr. Dondero. Upon information and belief, the Advisors and certain investment funds advised by the Advisors and/or their affiliates own interests in the CLOs for which the Debtor serves as portfolio manager or servicer.

29. On October 16, 2020, the Advisors wrote to Mr. Seery and, among other things, questioned the Debtor's business judgment and "request[ed] that no CLO assets be sold without prior notice to and prior consent from the Advisors." Mr. Seery did not accede to the Advisors' "request" nor did he otherwise respond to their letter.

30. On November 24, 2020, the Advisors sent another letter where they again questioned the Debtor's business judgment and "re-urge[d] [their] request that no CLO assets be sold without prior notice to and prior consent from the Advisors."

31. The Debtor has no contractual, legal, or other obligation to provide notice to, or obtain the consent of, the Advisors (or any other holder of interests in the CLOs) before exercising its business judgment to manage and service the CLOs, including in connection with the sale of the CLOs' assets.

32. On November 24, 2020, Mr. Dondero personally intervened to prevent sales of certain CLO assets that he knew Mr. Seery had authorized. Upon learning that the trades that Mr. Seery had authorized were being executed, Mr. Dondero sent an e-mail to Mr. Matthew Pearson (with copies to Mr. Hunter Covitz and Mr. Joseph Sowin) in which he said "No..... do not." About an hour later, Mr. Pearson (an HCMFA employee, not an employee of the Debtor) cancelled the trades, but Mr. Dondero warned Mr. Pearson that "HCMFA and DAF has [sic] instructed Highland in writing not to sell any CLO underlying assets . . . there is potential liability, don't do it again please."

33. Mr. Dondero's threat had the intended effect as Mr. Sowin (an HCMFA employee, not an employee of the Debtor) responded by saying that "Compliance should never have approved this order then – will coordinate with them Jim [Dondero]. Post: Please block all orders from Hitting the trading desk for the fun[ds] Jim [Dondero] mentioned."

34. On November 27, 2020, after learning that Mr. Seery had attempted to effectuate the trades, Mr. Dondero continued to interfere with the Debtor's business and engage in threatening conduct, this time writing to Thomas Surgent (the Debtor's Chief Compliance Officer) that "I understand Seery is working on a work around to trade these securities anyway. Trades that contradict investor desires and have no business purpose or investment rational. You might want to remind him (and yourself) that the chief compliance officer has personal liability."

35. On December 3, 2020, the Debtor demanded that the Advisors "cease and desist from making or initiating, directly or indirectly, any instructions, requests, or demands to HCMLP regarding the terms, timing, or other aspects of any portfolio transactions of any of the CLOs."

36. The Debtor made the same demand of Mr. Dondero the following day.

**C. The Debtor Demands that Mr. Dondero and His Affiliates Satisfy Certain Demand Notes, and Mr. Dondero Issues an Explicit Threat**

37. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Funds Advisors, LP, and Highland Capital Management Services, Inc. (collectively, the "Corporate Obligors") are the makers under a series of promissory notes in favor of the Debtor (collectively, the "Corporate Obligors' Notes").

38. In addition, Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor (collectively, the "Dondero Notes" and together with the Corporate Obligors' Notes, the "Demand Notes").

39. Each of the Demand Notes provides, among other things, that (a) all accrued interest and principal “shall be due and payable upon demand,” and that (b) the maker shall pay the holder (*i.e.*, the Debtor) all court costs and costs of collection, including reasonable attorneys’ fees and expenses, if, among other things, the Note is “collected through a bankruptcy court.”

40. On December 3, 2020, Debtor’s counsel sent letters to representatives of Mr. Dondero and each of the Corporate Obligors demanding payment of all unpaid principal and accrued interest due under the Demand Notes by December 11, 2020 (collectively, the “Demand Letters”). These demands were made to collect funds that will be required to fund the reorganized Debtor and the trust under the plan of reorganization that is subject to confirmation before this Court in January 2021.

41. Shortly after the Debtor sent the Demand Letters, Mr. Dondero sent a text message to Mr. Seery that stated only: “Be careful what you do – last warning.”

### **CLAIM FOR RELIEF**

#### **(For Injunctive Relief -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7065)**

42. The Debtor repeats and realleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

43. The Debtor seeks, pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 7065, a preliminary and permanent injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct.

44. Bankruptcy Code section 105(a) authorizes the Court to issue “any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a).



- (a) For a preliminary injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct;
- (b) For a permanent injunction enjoining Mr. Dondero from engaging in the Prohibited Conduct; and
- (c) For such other and further relief as this Court deems just and proper.

Dated: December 7, 2020.

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*Counsel for Plaintiff Highland Capital Management, L.P.*

**VERIFICATION**

I have read the foregoing VERIFIED ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF and know its contents.

- .. I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
  
- I am the Chief Executive Officer and Chief Restructuring Officer of Highland Capital Management, L.P., the Plaintiff in this action, and am authorized to make this verification for and on behalf of the Plaintiff, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.
  
- .. I am one of the attorneys of record for \_\_\_\_\_, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct as of this 7th day of December 2020.

/s/ James P. Seery, Jr.  
James P. Seery, Jr.

**B1040 (FORM 1040) (12/15)**

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Highland Capital Management, L.P.		<b>DEFENDANTS</b> James D. Dondero
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> Hayward & Associates, PLLC 10501 N. Central Expressway, Suite 106, Dallas, TX 75231 Tel: (972) 755-7110		<b>ATTORNEYS (If Known)</b> Bonds Ellis Eppich Schafer Jones LLP 420 Throckmorton St., Suite 1000, Fort Worth, TX 76102 Tel: (817) 405-6900
<b>PARTY (Check One Box Only)</b> <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b> Request for injunctive relief pursuant to 11 U.S.C. 105(a) and Rule 7065 of the Federal Rules of Bankruptcy Procedure		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)		<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$0.00
Other Relief Sought Preliminary and permanent injunction against Mr. James D. Dondero		

**B1040 (FORM 1040) (12/15)**

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054-sgj11
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE December 7, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

**INSTRUCTIONS**

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**TAB 2**

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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)  
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*Counsel for Highland Capital Management, L.P.*

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adversary Proceeding No.
Plaintiff,	§	
	§	20-03190-sgj
vs.	§	
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



**PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.’S  
EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION AGAINST MR. JAMES DONDERO**

Highland Capital Management, L.P., plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”) and the debtor and debtor-in-possession (the “Debtor” or “Highland”) in the above-captioned chapter 11 case (“Bankruptcy Case”), by and through its undersigned counsel, files this emergency motion (the “Motion”) seeking entry of a temporary restraining order and a preliminary injunction enjoining Mr. James Dondero (“Mr. Dondero” or “Defendant”) from: (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero’s counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor’s business, including but not limited to the Debtor’s decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”). In support of the Motion, the Debtor respectfully states the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.





Dated: December 7, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)

Ira D. Kharasch (CA Bar No. 109084)

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-and-

**HAYWARD & ASSOCIATES PLLC**

*/s/ Zachery Z. Annable*

---

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*Counsel for Highland Capital Management, L.P.*

**EXHIBIT A**

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

<p>In re:</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup></p> <p style="text-align: center;">Debtor.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p> <p>Related to Docket No. _____</p>
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**ORDER GRANTING DEBTOR’S MOTION FOR A TEMPORARY RESTRAINING  
ORDER AGAINST JAMES DONDERO**

Having considered the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. \_\_\_\_] (the “Motion”), the *Memorandum of Law* (the “Memorandum of Law”)<sup>2</sup> in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor’s Motion for a Temporary Restraining Order against James Dondero* [Docket No. \_\_\_\_] (the “Seery Declaration”), including the exhibits

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is

**HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and

pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>3</sup>

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

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<sup>3</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

**TAB 3**

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

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	)	<b>Case No. 19-34054-sgj-11</b>
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	December 10, 2020
	)	9:30 a.m. Docket
Debtor.	)	
<hr/>		
HIGHLAND CAPITAL	)	<b>Adversary Proceeding 20-3190-sgj</b>
MANAGEMENT, L.P.,	)	
	)	
Plaintiff,	)	- MOTION FOR PRELIMINARY
	)	INJUNCTION
v.	)	- MOTION FOR TEMPORARY
	)	RESTRAINING ORDER
JAMES D. DONDERO,	)	
	)	
Defendant.	)	
<hr/>		

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

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Plaintiff:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Chicago, IL 60603 (312) 853-7539

1 APPEARANCES, cont'd.:

2 For the Defendant: D. Michael Lynn  
3 John Y. Bonds, III  
4 BONDS ELLIS EPPICH SCHAFFER JONES,  
5 LLP  
6 420 Throckmorton Street,  
7 Suite 1000  
8 Fort Worth, TX 76102-5304  
9 (817) 405-6903

10 For the NexPoint Parties: James A. Wright, III  
11 K&L GATES  
12 State Street Financial Center  
13 One Lincoln Street  
14 Boston, MA 02111  
15 (617) 261-3193

16 For the CLOs/Issuer Group: James E. Bain  
17 JONES WALKER, LLP  
18 811 Main Street, Suite 2900  
19 Houston, TX 77002  
20 (713) 437-1820

21 Recorded by: Michael F. Edmond, Sr.  
22 UNITED STATES BANKRUPTCY COURT  
23 1100 Commerce Street, 12th Floor  
24 Dallas, TX 75242  
25 (214) 753-2062

Transcribed by: Kathy Rehling  
311 Paradise Cove  
Shady Shores, TX 76208  
(972) 786-3063

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 DALLAS, TEXAS - DECEMBER 10, 2020 - 9:58 A.M.

2 THE COURT: We only have left today the Highland  
3 matter. There may be people on the line for the RE Palm  
4 Springs matter, but if you're on the line for that, the Court  
5 granted a motion for continuance that was filed by SR  
6 Construction, Inc. a few days ago. So if you were on the line  
7 for that, that's been continued at the Movant's request. Or  
8 the Objector's request, I should say. And it's to be reset at  
9 such point in time as the lawyers seek that.

10 All right. So, with that, I am going to turn to Highland  
11 and our emergency motion for a temporary restraining order  
12 against James Dondero that was filed by the Debtor. First,  
13 for the Debtor team, who do we have appearing?

14 MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
15 Pomerantz, also with John Morris. John Morris will be handling the  
16 hearing today on behalf of the Debtor.

17 THE COURT: All right. Thank you. For Mr. Dondero, who  
18 do we have appearing?

19 MR. BONDS: Your Honor, John Bonds and Michael Lynn.

20 THE COURT: All right. Thank you. The Committee, I know,  
21 is interested in this. Who do we have appearing for the Committee?

22 MR. CLEMENTE: Good morning, Your Honor. Matthew  
23 Clemente; Sidley Austin; on behalf of the Committee.

24 THE COURT: All right. I'm going to ask, do we have  
25 anyone appearing for certain parties who filed another emergency

1 motion yesterday, I think involving what seemed like very  
2 overlapping issues. The parties that I'm talking about are Highland  
3 Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.;  
4 and NexPoint Strategic Opportunities Fund. Do we have anyone -- I  
5 think it was the K&L Gates firm who filed an emergency motion  
6 yesterday on, like I said, what I think are some overlapping issues  
7 with what we're going to hear about today. Anyone here on the line  
8 for those entities?

9 MR. WRIGHT: Yes. Good morning, Your Honor. It's James  
10 Wright, K&L Gates. I wasn't expecting this matter to be on today,  
11 so I need to apologize for not having a coat and a tie.

12 THE COURT: Okay. Well, I realize I picked you out. But  
13 could you, for the court reporter, say your last name again? It was  
14 a little garbley.

15 MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

16 THE COURT: Okay. Thank you. Well, we have a lot of  
17 other folks on the line, so I'll just ask: Is there anyone else out  
18 there who desires to appear? This was obviously set very expedited,  
19 so maybe people did not file a pleading to weigh in, but maybe  
20 they're wanting to appear. If so, go ahead. (No response.) All  
21 right. Hearing no others, I will go to you, I guess, Mr. --

22 MR. BAIN: Your Honor?

23 THE COURT: Oh, go ahead.

24 MR. BAIN: Your Honor?

25 THE COURT: Yes?

1 MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain  
2 of the law firm of Jones Walker. I represent the CLOs. And Your  
3 Honor, at the appropriate time, if Your Honor doesn't mind, I have a  
4 few comments that may help inform the Court on kind of what's going  
5 on. But I'm happy to wait until the appropriate time.

6 THE COURT: Okay. Very good. Well, and the reason why I  
7 picked out Mr. Wright regarding that newest emergency motion is, you  
8 know, I know they've asked for an emergency setting next Tuesday,  
9 and I have not -- I've not made a decision on that. I kind of  
10 wanted to see what I hear about today and figure out if there's  
11 really, you know, a need for that or not.

12 So, thank you, Mr. Bain. We'll talk to you at some point  
13 today.

14 MR. BAIN: Thank you, Your Honor.

15 THE COURT: Any other appearances?

16 All right. Well, I was about to go back to or go to Mr.  
17 Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a  
18 responsive pleading? When I left here yesterday afternoon, I  
19 did not see one. But was there one filed late at night, by  
20 chance, that I just haven't seen?

21 MR. BONDS: No, Your Honor, we have not.

22 THE COURT: Okay. Thank you.

23 MR. BONDS: (garbled)

24 THE COURT: All right. Mr. Morris, go ahead.

25 MR. MORRIS: Thank you, Your Honor. John Morris;

1 Pachulski, Stang, Ziehl & Jones; for the Debtor.

2 Let me begin by thanking Your Honor for hearing us on such  
3 shortened notice. What I thought I'd do is spend a few  
4 minutes, Your Honor, talking about why we're here, summarizing  
5 the facts, and then summarizing for the Court the relief that  
6 we're seeking.

7 As Your Honor, I presume, is aware, we filed this motion  
8 on Monday, together with a declaration from Jim Seery, the  
9 Debtor's CEO and CRO, with 29 separate exhibits. And if it  
10 pleases the Court, I'd like to proceed in that manner.

11 THE COURT: All right. You may.

12 MR. MORRIS: Okay. Your Honor, we do regret that  
13 we're here, frankly. The Debtor has worked very hard during  
14 the course of this case to get to where we are. We have a  
15 plan on file that calls for the monetization of the Debtor's  
16 assets for distribution to holders of allowed claims, we have  
17 an approved disclosure statement, and confirmation is just  
18 five weeks away.

19 Unfortunately, in the last couple of weeks, Mr. Dondero  
20 has engaged in what we firmly believe is wrongful conduct and  
21 can't really be credibly disputed or justified. As Mr. Seery  
22 lays out in his declaration and as Mr. Dondero's own written  
23 words show, Mr. Dondero recently interfered with the Debtor's  
24 operations and decisions and made some rather explicit  
25 threats.

1 We're not here to punish Mr. Dondero. We're not here  
2 seeking sanctions for violation of the automatic stay.  
3 Rather, we're here to simply set some very clear and firm  
4 ground rules on a go-forward basis so the Debtor can get  
5 across the finish line without interference or coercion by Mr.  
6 Dondero or anyone acting on his behalf. That's all we're here  
7 to do today.

8 We tried to work with Mr. Dondero's counsel on a  
9 stipulation, but regrettably were unable to do so.

10 So let me describe for the Court the facts that support  
11 the motion, and at the end of that I will offer our exhibits  
12 into evidence.

13 I do want to provide some context into how we got here.  
14 The facts are pretty simple. As Your Honor will recall, back  
15 in January, with this Court's approval, Mr. Dondero  
16 surrendered control of the Debtor to an independent board of  
17 directors, including Mr. Seery. As Your Honor knows, though,  
18 Mr. Dondero was retained as a portfolio manager and as an  
19 unpaid employee of the Debtor.

20 Pursuant to the Court's order and the term sheet entered  
21 into with the Unsecured Creditors' Committee, Mr. Dondero's  
22 responsibilities were to be determined by the board, and he  
23 agreed to resign at the board's request.

24 Over the summer, as Your Honor will recall, Mr. Seery was  
25 appointed the Debtor's CEO and CRO. Throughout this time, Mr.

1 Seery worked closely with Mr. Dondero. And one of the things  
2 they worked on was trying to come up with a so-called pot  
3 plan, the goal of which was to come to a consensual resolution  
4 of this case. Mr. Seery's goal, the (garbled) goal, the  
5 Debtor's goal, was to try to give the estate an alternative to  
6 the monetization of the Debtor's assets, and Mr. Seery worked  
7 hard and in good faith in that regard.

8 As Your Honor will also recall, in late summer the Debtor  
9 and certain litigation creditors agreed to mediate these  
10 disputes. In September, the Debtor announced that it had  
11 reached an agreement with Josh Terry and Acis to resolve their  
12 claims. I don't need to remind the Court of the nature of the  
13 disputes between Mr. Dondero and Mr. Terry, but suffice it to  
14 say that Mr. Dondero made clear that he opposed not only the  
15 settlement that was reached at the mediation, but, really, any  
16 settlement at all with Mr. Terry.

17 At around the same time, while still trying to get to the  
18 pot plan and a consensual resolution, the Debtor did present  
19 its plan of reorganization that provides for the monetization  
20 of the assets for the benefit of creditors. By the end of  
21 September, Mr. Dondero made it clear that he would oppose both  
22 the Acis settlement and the Debtor's plan.

23 He has every right to do that, Your Honor. Well, those  
24 steps are contrary to the interests of the Debtor. In  
25 addition, it also became clear that Mr. Dondero, through

1 (garbled) trust, has continued to press his claims that the  
2 Debtor had -- that the Debtor had mismanaged Multi-Strat  
3 during the case.

4 For these reasons, I think on October 2nd the board asked  
5 Mr. Dondero to resign, and he did so on October 9th.

6 With confirmation on the horizon, in the last couple of  
7 weeks, regrettably, Mr. Dondero has, in fact, interfered with  
8 the Debtor's business. There's no dispute that the Debtor  
9 serves as the manager of certain CLOs. There's no dispute  
10 that Mr. Dondero and certain of his affiliates hold a portion  
11 of the preferred notes in the CLOs managed by the Debtors. I  
12 don't think there's any dispute that the Debtor's duty is to  
13 the CLOs and not to any particular holder of CLO interests.

14 In late November, in furtherance of his duties, Mr. Seery  
15 directed that certain assets held by the CLOs be sold. Mr.  
16 Dondero and certain entities he controls, the ones that we  
17 mentioned earlier, Your Honor, the ones that are the  
18 (garbled), apparently disagreed with Mr. Seery's business  
19 judgment, and that happens.

20 I do want to point out, I don't know if Your Honor has had  
21 a chance to read the competing TRO, --

22 THE COURT: I have.

23 MR. MORRIS: -- but what's notable -- okay. What's  
24 notable in there, Your Honor, is that they expressly admit,  
25 and I'm quoting, the Debtor is responsible for making

1 decisions to sell the CLOs' assets. They admit that in their  
2 request for a TRO.

3 So there's no dispute that Mr. Seery has the right to do  
4 what he set out to do. Nevertheless, Mr. Dondero intervened  
5 and personally stopped the trades that Mr. Seery authorized.  
6 It's in writing. It can't be disputed. In fact, it's set  
7 forth in Exhibit 8, which is attached to Mr. Seery's  
8 declaration, which can be found at Docket 4 to the adversary  
9 proceeding.

10 Not only did Mr. Dondero cause the trades to halt, he told  
11 certain people, including the Debtor's chief compliance  
12 officer, not to do it again, and (inaudible) that they would  
13 face personal liability if they did so.

14 The Debtor sent cease-and-desist letters to Mr. Dondero  
15 and his affiliated entities. Those letters are attached as  
16 Exhibits 9 and 10 to Mr. Seery's declaration. And the fact  
17 is, Your Honor, for this particular part of the episode, Mr.  
18 Seery's conduct is simply unacceptable and was one of the  
19 events that precipitated the filing of this motion.

20 THE COURT: You said Mr. Seery. I think you meant  
21 Mr. Dondero.

22 MR. MORRIS: I apologize, Your Honor. I certainly  
23 did, yes.

24 THE COURT: Okay.

25 MR. MORRIS: The other event that caused the Debtor

1 to file this motion was a rather explicit written threat that  
2 Mr. Dondero made to Mr. Seery promptly after the Debtor acted  
3 to fulfill its fiduciary duties to the estate.

4 As the Court may generally be aware, Mr. Dondero and  
5 certain of his affiliates are the makers under a series of  
6 promissory notes in favor of the Debtor. The notes are  
7 attached as Exhibits 11 through 23 to Mr. Seery's declaration.  
8 Certain of these notes are demand notes, meaning that they  
9 don't have a term, they don't expire at some defined point in  
10 the future, they're payable upon demand by the holder. The  
11 Debtor is the holder of these notes.

12 Last week, the Debtor exercised its right to make a demand  
13 for payment of all unpaid principal and accrued interest,  
14 estimated to be approximately \$30 million in the aggregate.  
15 Those demands are set forth in Exhibits 24 through 27 in Mr.  
16 Seery's declaration.

17 The demand notes are property of the Debtor's estate,  
18 collection of the notes is part of the Debtor's liquidity  
19 plan, and the proceeds are expected to be used to pay  
20 creditors' claims.

21 Shortly after the demand for payment on the notes was  
22 made, Mr. Seery [sic] sent a short text that can be found at  
23 Exhibit 28, saying simply, Be careful what you do. Last  
24 warning.

25 To Mr. Seery's surprise, Mr. Dondero called him the

1 following morning, ostensibly to talk about his pot plan. As  
2 laid out in his declaration, Mr. Seery expressed considerable  
3 concern over the threat, expressed his view that he thought it  
4 was unlawful, and was surprised, really, at the nature of the  
5 conversation.

6 Mr. Dondero didn't apologize during that call. He didn't  
7 express regret. Instead, he suggested that the lawyers would  
8 handle that issue. And only at the end of the call, when Mr.  
9 Seery pressed, did Mr. Dondero begrudgingly say that he didn't  
10 mean any physical harm.

11 Your Honor, we're five weeks away from confirmation. The  
12 Debtor is laser-focused on getting there. We are -- continue  
13 -- we have resolved substantial claims. We continue to  
14 resolve substantial claims. And though if there was a viable  
15 pot plan the Debtor would still pursue it, the Debtor is  
16 seeking a smooth transition into its post-bankruptcy state.  
17 We continue to negotiate with creditors who have outstanding  
18 claims. And we need peace. We need the freedom to get there.

19 As a result of the foregoing, the Debtor seeks the entry  
20 of a temporary restraining order in the form of Exhibit A  
21 attached to the motion, which is on Docket #2 in the adversary  
22 proceeding. In substance, the form is intended to prevent Mr.  
23 Dondero from interfering with the Debtor's business, engaging  
24 in threatening or coercive conduct, and using his affiliates  
25 or others acting on his behalf to do the same.

1 In our discussions with Mr. Dondero's counsel, it became  
2 clear that Mr. Dondero was not interested at this time in  
3 resolving the entirety of the dispute. We wanted to get this  
4 whole adversary proceeding open and closed and put this behind  
5 us. But regrettably, we're here today to press the motion  
6 because we were unable to come to that agreement.

7 So, in addition to the entry of the order attached to the  
8 motion, the Debtor also requests that the Court hold an  
9 evidentiary hearing on the Debtor's request for a preliminary  
10 injunction on January 4th, when we already have time on the  
11 Court's calendar.

12 And so that there's no misunderstanding, if the parties  
13 cannot resolve this matter beforehand, the Debtors do intend  
14 to take discovery during the intervening period. We will be  
15 prepared on January 4th, and we would expect, if forced to, to  
16 call Mr. Dondero as a witness at that hearing.

17 I have nothing further, Your Honor. Oh, actually, I do  
18 have something further. The Debtor moves for the entry into  
19 evidence of the declaration of Mr. James P. Seery, Jr.  
20 (muffled).

21 THE COURT: Okay. You got a little garbley. I think  
22 someone unmuted their device during your --

23 THE CLERK: Mr. Bonds --

24 THE COURT: Okay. But the request was that the Court  
25 admit into evidence the declaration of Mr. Seery at Docket

1 Entry #4, along with the 29 exhibits that were attached to  
2 that declaration. Any objection? (No response.) All right.  
3 Those will be admitted into evidence.

4 (Debtor's 29 exhibits are received into evidence.)

5 THE COURT: All right. Mr. Bonds, what does Mr.  
6 Dondero wish to tell the Court? All right. I think you put  
7 yourself back on mute when I made the comment. Please unmute  
8 your device.

9 MR. BONDS: I'm sorry, Your Honor. Can you hear me?

10 THE COURT: I can.

11 MR. BONDS: Your Honor, I would first like to  
12 apologize for Mr. Dondero's email to Mr. Seery. It should not  
13 have been sent. It is unfortunate that Mr. Dondero had  
14 several good points to make, but the message he was trying to  
15 send to the Debtor seems to have been lost, and for that I  
16 apologize.

17 Mr. Dondero had serious concerns about the way in which  
18 the Debtor's employees have been treated in this case. As the  
19 Court knows, the employees who built this company will be  
20 terminated either on December 31st or upon confirmation of the  
21 Debtor's most recent plan. Mr. Dondero does not agree to such  
22 termination or the financial treatment of the employees,  
23 especially the treatment over the last few months, in which  
24 they have seen their claims be substantially reduced.

25 Your Honor, Mr. Dondero is further concerned with the

1 Debtor's lack of sale of assets, especially the lack of  
2 competitive bidding. Mr. Dondero may want to bid on some of  
3 those assets, and under the Debtor's procedure, he is being  
4 precluded from bidding, even if the sale is outside of the  
5 ordinary course of business.

6 Mr. Dondero is further frustrated by the Debtor's sale of  
7 certain CLOs under applicable law. Is this an attempt around  
8 the hearing on the 16th? I don't know, Your Honor, but we are  
9 set for the 16th on the issue of whether or not the sales are  
10 being made outside the ordinary course of business. Is the  
11 Debtor trying to sell its assets without competitive business  
12 -- bidding? Why is that?

13 And what the Debtor would like you to sign is as an overly  
14 broad TRO written, I suspect, with a peppering of anger  
15 throughout. The relief requested is basically in the  
16 declaration of Jim Seery. It contains a number of acts which  
17 the Debtor seeks to have this Court determine are prohibited  
18 conduct. That term is defined in the Debtor's motion for TRO.  
19 We assert that such language is overly broad and its  
20 (inaudible) behavior which Debtor seeks to prohibit is not  
21 justified, inapplicable, or simply does not make common sense.

22 Your Honor, in the second paragraph of the proposed TRO,  
23 there are five general concepts that are listed as prohibited  
24 conduct. The first category of prohibited conduct which we  
25 have issues with relates to Mr. Dondero communicating with the

1 Debtor's employees except as it relates to the shared services  
2 provided by or controlled by Mr. Dondero. Such a prohibition  
3 is unreasonably broad and seemingly may well violate the First  
4 and the Fourth Amendments.

5 Your Honor, we ask the question: Can Mr. Dondero  
6 communicate something as basic as an employment contract with  
7 an employee who is going to be let go without violating the  
8 TRO?

9 The second category of prohibited conduct relates to  
10 allegedly interfering or otherwise impeding, directly or  
11 indirectly, the Debtor's business concerning its operations,  
12 management, treatment of claims, disposition of assets owned  
13 or controlled by the Debtor, and pursuit of the plan or any  
14 alternative to the plan. Your Honor, what does the word  
15 indirectly mean? Does such prohibition prohibit the Debtor  
16 from pursuing -- or Mr. Dondero from pursuing his Acis 9019  
17 motion or appeal? What does the language mean with regard to  
18 pursuit of the plan or any plan alternative? Has the Debtor  
19 turned the shield into a sword? Can the Debtor -- can Mr.  
20 Dondero try to sell his pot plan which he and the mediators  
21 have worked so diligently on? Does Mr. Dondero violate the  
22 terms of the TRO simply by voting against the plan?

23 Is this really what the Debtor wants, or does the Debtor  
24 want to return the most money that it can to the Debtor's  
25 creditors?

1 Can Mr. Dondero even (inaudible) in the organization  
2 without violating the TRO?

3 Finally, the proposed order provides that Mr. Dondero is  
4 further temporarily causing -- temporarily enjoined and  
5 restrained from causing, encouraging, or conspiring with (a)  
6 an entity owned or controlled by him and/or any person or any  
7 entity acting on his behalf from directly or indirectly  
8 engaging in any prohibited conduct. Again, what does the word  
9 causing mean? What about the word encouraging? Does that  
10 mean that the Debtor simply cannot do any action to protect  
11 himself -- Mr. Dondero cannot take any action to protect  
12 himself? Are we setting up Mr. Dondero to fail?

13 Your Honor, what we would ask, what we would ask the Court  
14 to do is either deny the TRO as being overly broad or order  
15 the Debtor to come up with some reasonable restrictions going  
16 forward. We are happy to consider anything reasonable, but  
17 the proposed TRO is anything but reasonable.

18 In summary, we ask the Court how the status quo would be  
19 altered by a TRO.

20 Your Honor, I think Mr. Morris has indicated that the  
21 Debtor intends to be able to confirm a plan on the 5th -- or  
22 the 12th, excuse me, of January. Your Honor, we don't believe  
23 that that's appropriate. Is Mr. Dondero prohibited from  
24 trying to get his plan confirmed? Is he -- I mean, it seems  
25 to me that he basically is.

1 Your Honor, with regard to two arguments made by Mr.  
2 Morris, or at least one, we deny that any demand notes  
3 precipitated Mr. Dondero's email. It had absolutely nothing  
4 to do with it. But we're not here to talk about Mr. Dondero's  
5 demand notes at this point.

6 I don't think I have anything further.

7 MR. MORRIS: If I may respond very briefly, Your  
8 Honor?

9 THE COURT: You may. Go ahead.

10 MR. MORRIS: Okay. Your Honor, we are cognizant, and  
11 we don't mean, with all due respect to Mr. Bonds, to infringe  
12 on any way Mr. Dondero's right to make applications to this  
13 Court, to file motions. I think I heard mention of, you know,  
14 questions as to whether Mr. Dondero could pursue his motion  
15 against Acis, his appeal of the Acis, about whether or not or  
16 he could file things in this Court. We expressly put in a  
17 footnote, in order to try to make it clear, that Mr. Dondero  
18 has and will continue to have a right to make any application  
19 he wants to this Court, to object to any motion that's made.  
20 That's not the point of the exercise. The point of the  
21 exercise is to protect the Debtor from interference -- to  
22 protect the Debtor (echoing) from interference, coercion, and  
23 from threats. It's really that simple. I don't know why  
24 words that we use in common language every day, such as  
25 causing or conspiring or encouraging, should be deemed to be

1 ambiguous. I think, given the importance of these issues, one  
2 ought to be able to stay on the right side of that line  
3 without questioning whether or not they're actually conspiring  
4 with somebody or encouraging somebody to do something that  
5 they're otherwise prohibited from doing.

6 What the Debtor will not tolerate, Your Honor, is play  
7 whack-the-mole, where we get an order against Mr. Dondero,  
8 only to have one of his affiliated entities or somebody acting  
9 on his behalf attempt to say, oh, no, I'm here acting on my  
10 own independent behalf, and they're going to do exactly what  
11 Mr. Dondero is prohibited from doing. So that's all.

12 Again, Your Honor, we're not here with hysteria. I don't  
13 think our papers were intended to nor did they project any  
14 hysteria. I think, with counsel, as provided for in the  
15 proposed order, we would be delighted to continue to work with  
16 Mr. Dondero constructively. If he's got ideas on his pot  
17 plan, we're not precluding him from doing that at all. All  
18 we're saying is that he's got to participate with counsel and  
19 that he's not going to make any further direct communications  
20 to the Debtor's officers, directors, or employees. That's  
21 all, Your Honor. We think it's really quite reasonable under  
22 the circumstances.

23 I have nothing further.

24 THE COURT: All right. Well, --

25 MR. BAIN: Your Honor?

1 THE COURT: Who just spoke up?

2 MR. BAIN: (garbled) Yes. Joseph Bain on behalf of  
3 the CLOs, if I may be heard.

4 THE COURT: Okay. Everybody else mute their line.  
5 Okay. Go ahead, Mr. Bain.

6 MR. BAIN: Yes, Your Honor. And can you hear me  
7 okay?

8 THE COURT: I can.

9 MR. BAIN: Wonderful. Your Honor, for the record,  
10 Joseph Bain of the law firm of Jones Walker on behalf of the  
11 CLOs.

12 Our role in this is obviously very sensitive, given the  
13 nature and relationships that exist. One of the things I did  
14 want to let Your Honor know, though, is that -- two things.  
15 One, one of the most outstanding issues, at least in my  
16 opinion, regarding confirmation of the plan is essentially  
17 what to do with the CLOs and collateral management agreements.  
18 That's still an open issue. If that's not resolved, there are  
19 significant rejection damages that could come from that. So  
20 that's the bad news.

21 The good news, however, is, up until this week, we've been  
22 negotiating with the Debtors and we have calls set for  
23 NexPoint -- with NexPoint to negotiate what all parties kind  
24 of refer to as a soft landing for the CLOs, which, to a large  
25 extent, involve the issues that are before you today.

1 I just, I just wanted to provide that context because the  
2 parties are talking and we are kind of taken aback by kind of  
3 the most recent event this week, because from an outsider's  
4 perspective, the current issues that are currently kind of at  
5 dispute here, we thought everyone was working towards a deal.  
6 And I think it is a little ironic that -- and as Your Honor  
7 knows, I was involved in the *Hoactzin* case, and I thought that  
8 that was a very -- I represented Mac Murray (phonetic) in that  
9 case, and I thought Ms. Byrnes and Mr. Hendricks did an  
10 excellent job of pulling all the parties together.

11 And Your Honor, I don't want to stray too far outside of  
12 my lane to suggest that that same approach is what is needed  
13 here, but I just want to raise for Your Honor to let you know  
14 that we are here. We're kind of the party stuck in the  
15 middle. And we're hoping and we're -- remain willing to  
16 negotiate all the outstanding issues. But obviously, given  
17 the nature of some of the allegations, it's more complicated  
18 right now.

19 THE COURT: Okay.

20 MR. BAIN: And that's all I have, Your Honor.

21 THE COURT: All right. Well, I appreciate you  
22 speaking up. And you may or may not remember that the Court  
23 ordered mediation last July, global mediation, including Mr.  
24 Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis,  
25 the Crusader Redeemer Committee, and we had a co-mediation

1 team. Retired Bankruptcy Judge Allan Gropper and former Weil  
2 Gotshal partner Sylvia Mayer. And while I don't communicate  
3 with mediators, I fully believe from the parties' reports that  
4 was mediation that the parties and lawyers tried very, very  
5 hard in to get to some settlements, and in fact, they did get  
6 to a settlement with Acis and the Redeemer Committee.

7 So, I have a heck of a lot of thoughts here, and I'll  
8 refrain from sharing every one of them, but I'm going to share  
9 a few of them. While I appreciate Mr. Bonds doing what was an  
10 honorable thing and apologizing on behalf of his client for  
11 the written communications that were worded in such a way  
12 where someone might think they were threatening or a violation  
13 of the stay, it wasn't an apology from Mr. Dondero directly.  
14 I think the really, really honorable thing might have been if  
15 Mr. Dondero came here, hat in hand, willing to go under oath  
16 and explain himself. You can share that with him, that's what  
17 this judge thinks, that the apology through counsel fell a  
18 little short, although I definitely appreciate counsel  
19 expressing the apology.

20 You know, I've been going back and forth looking at my  
21 computer screen today, and, you know, it's rather shocking to  
22 see in writing, you know, with the photo shot of a text where  
23 Dondero says, "Be careful what you do-last warning." I mean,  
24 that's just pretty shocking.

25 MR. BONDS: Your Honor? Your Honor?

1 THE COURT: Yes.

2 MR. BONDS: Can I have a second? Mr. Dondero did  
3 apologize to counsel and to Mr. Seery as well, and so the idea  
4 that Mr. Dondero has not apologized is not entirely correct.

5 THE COURT: Okay. Well, if I misunderstood, I  
6 apologize. But I guess what I was really trying to convey is,  
7 in a situation like this, I think coming into court and taking  
8 his lumps and saying things under oath might have been a  
9 better way to proceed.

10 I guess the second thing I want to say is I wish Mr.  
11 Dondero was here, because maybe I'm reading this wrong, but I  
12 think he needs to hear and know he is not in charge anymore of  
13 Highland. It may have been his baby. He may have created its  
14 wealth. But when he and the board made the decision to file  
15 Chapter 11, number one, that changed everything. And then  
16 number two, when the Committee was formed and was threatening  
17 "We think we need a Chapter 11 trustee because of conflicts of  
18 interest of Mr. Dondero and others," and when the Committee  
19 negotiated something short of that with the Debtor in January  
20 2020, you know, a settlement that involved Mr. Dondero no  
21 longer being in charge, no longer being CEO, no longer having  
22 any role except portfolio manager with the Debtor, and when  
23 various protocols were negotiated, heavily negotiated, for  
24 weeks, detailed, complex protocols, life changed even further.  
25 It changed when he filed Chapter 11, when he put his baby,

1 Highland, in Chapter 11, and then it changed further in  
2 January 2020 when this global corporate governance settlement  
3 was reached. As we know, it involved independent new board  
4 members coming in and eventually a new CEO. He's not in  
5 charge.

6 Now, that doesn't mean he's not a party in interest, and  
7 he can certainly weigh in with pleadings in the bankruptcy  
8 court. But these communications that I've admitted into  
9 evidence, and the declaration, the sworn declaration of Mr.  
10 Seery, suggest to me that he's not fully appreciating that,  
11 sorry, you're not in charge. And when you chose to put the  
12 company in bankruptcy because of the overwhelming debt, it  
13 started a cascade of events, so that now I'm depending on a  
14 debtor-in-possession with a new board and a new CEO and a  
15 Committee of very sophisticated members and professionals who  
16 are working in tandem with the Debtor to be in charge,  
17 basically. All right? So that's another thing I just feel  
18 compelled to say for Mr. Dondero's benefit.

19 I guess another thing is there was a little bit of a  
20 theme, Mr. Bonds, in your comments that Mr. Dondero is just  
21 concerned, more than anything else, about the way employees  
22 are being treated, or at least that's a major concern. And I  
23 don't find that to be especially compelling. I mean, maybe if  
24 he was sworn under oath and testified, I would believe that,  
25 but it doesn't feel like what's really going on here. Again,

1 he took the step of deciding that the company should file  
2 Chapter 11. We had the change in corporate governance in  
3 January. And he has the ability -- everyone, I think, would  
4 very much be interested in a plan that he supports. You know,  
5 he wants to get the company back. That has been made clear in  
6 hearings from time to time, and I believe, from Seery's  
7 declaration and Highland's lawyers, that they've been and will  
8 remain receptive to Mr. Dondero's ideas for a different type  
9 of plan that might allow him to get back into control of  
10 Highland, if he puts in adequate consideration that makes the  
11 Committee and others happy.

12 But we're in a proverbial the-train-is-leaving-the-station  
13 posture right now. Okay? We've got confirmation coming up  
14 the second week of January or something like that. Okay. So  
15 the train is leaving the station, so we're running out of time  
16 to hear what Dondero might want to do as far as an alternative  
17 plan.

18 So, as far as the requested TRO, I appreciate that Mr.  
19 Dondero and his counsel are worried about some ambiguity, but  
20 I'm looking through the literal wording that has been  
21 proposed, and the wording proposed is that Dondero is  
22 temporarily enjoined and restrained for communicating, whether  
23 orally, in writing, or otherwise, directly or indirectly, with  
24 any board member, unless Mr. Dondero's counsel and counsel for  
25 the Debtor are included in such communications. Not ambiguous

1 at all to me, and not unreasonable. Okay? Time to have  
2 counsel involved in these conversations because, you know, we  
3 can't have businesspeople-to-businesspeople sending texts that  
4 look like threats to me.

5 Second, making any express or implied threats of any  
6 nature against the Debtor or any of its directors, officers,  
7 employees, professionals, or agents. I don't think that's too  
8 much to ask. Please don't let him make threats to us anymore.

9 C, communicating with any of the Debtor's employees,  
10 except as it specifically relates to shared services currently  
11 provided to affiliates owned or controlled by Mr. Dondero.  
12 That seems reasonable to me because of the evidence in front  
13 of me.

14 Then D, interfering with or otherwise impeding, directly  
15 or indirectly, the Debtor's business, including but not  
16 limited to the Debtor's decisions concerning its operations,  
17 management, treatment of claims, disposition of assets owned  
18 or controlled by the Debtor, and pursuit of the plan or any  
19 alternative to the plan.

20 Now, I guess maybe you're confused or feel like that is  
21 ambiguous. I will just say, for the sake of any doubt, and I  
22 think I heard Mr. Morris saying precisely this, that, you  
23 know, Dondero can file pleadings. Okay? He can file  
24 pleadings asking for relief. He can object to the plan. He  
25 can vote against the plan. And they are completely still open

1 to hearing about -- and I think they would have a fiduciary  
2 duty -- to hear about a pot plan that might be more favorable  
3 than what's on the table right now. But Mr. Morris, have I  
4 put words into your mouth? Isn't that exactly what you were  
5 saying?

6 MR. MORRIS: That is exactly right, Your Honor. And  
7 if you look, I think there's a footnote there that expressly  
8 provides -- gives Mr. Dondero the right --

9 THE COURT: Okay.

10 MR. MORRIS: -- confirms his right to do exactly what  
11 you just described.

12 (Echoing.)

13 THE COURT: Okay. Thank you for that. And I should  
14 say exclusivity is still in place, right? We don't -- I mean,  
15 I'm not inviting him to file a plan right now in violation of  
16 the exclusivity provisions, but I'm just saying discussions  
17 among lawyers, I think, are not only not prohibited but  
18 encouraged here.

19 And then, last, otherwise violating Section 362 of the  
20 Bankruptcy Code. Okay, the sky is blue. That is obviously  
21 not problematic.

22 Okay. So the next paragraph, James Dondero is further  
23 temporarily enjoined and restrained from causing, encouraging,  
24 or conspiring with any entity owned or controlled by him  
25 and/or any person or entity acting on his behalf from directly

1 or indirectly engaging in any prohibited conduct.

2 You know, I don't -- I understand that indirectly, you  
3 know, there might be some concern about the ambiguity, but it  
4 looks like to me just sort of a catchall, okay, to the extent  
5 we didn't explicitly say it in the preceding paragraph, we  
6 don't want Dondero causing some employee of an affiliate he  
7 controls to do exactly what Dondero himself is prohibited from  
8 doing.

9 I don't think it's ambiguous. And if it is, if someone  
10 runs in here, he's violated Paragraph 3 of the TRO, well,  
11 obviously we would have a contested hearing where I'm not  
12 going to hold him in contempt of court unless I've got an  
13 evidentiary showing that would convince me of that.

14 So, I guess, on balance, I'm overruling the objections and  
15 I am granting the TRO.

16 And just to be clear, I'll make a record that bankruptcy  
17 courts certainly under Section 105 can issue a TRO, and courts  
18 are usually bound by the traditional factors of Rule 65 --  
19 that is, looking at has there been a showing of immediate and  
20 irreparable harm? Is there a probability of success on the  
21 merits that the Debtor will be entitled to this when we have a  
22 later more fulsome hearing on the preliminary injunction  
23 request? Would the balance of equities favor the Movant  
24 Debtor here? And would the injunction serve the public  
25 interest?

1 I find from the evidence, the declaration of Mr. Seery,  
2 and the supporting documents, that all four prongs for a TRO  
3 are met here, so I am ordering it.

4 A couple of remaining things. We'll come back on January  
5 4th to consider whether extension of this relief in a  
6 preliminary injunction is appropriate. I don't have at my  
7 fingertips the time of day where it's set on the 4th. Is it  
8 -- I think that's the Monday after the New Year's Day holiday.  
9 So I'm guessing we're set at 1:30.

10 Traci, if you're out there, can you confirm it's 1:30 on  
11 January 4th?

12 Okay. I'm not hearing a response from her. But Nate,  
13 maybe you can double-check that.

14 (Echoing.)

15 All right. Well, let's talk a minute about what is going  
16 to happen next week.

17 Mr. Bonds, I set -- okay, back on November -- please take  
18 your phone off mute when I am talking. Or put it on mute when  
19 I'm talking, please.

20 On November 19th, you filed the motion, basically -- I  
21 can't remember the wording of it -- but something like wanting  
22 to change the protocol for non-ordinary-course sales of  
23 assets. And you asked for an emergency hearing, and I denied  
24 that. And I was very concerned that it looked like an attempt  
25 to renegotiate the January protocol order that the Committee

1 had worked so hard to negotiate on. But it's set, finally. I  
2 think it's this next Thursday, a week from today.

3 But meanwhile, you know, again, I feel like the issues  
4 raised in that are very much overlapping with what we talked  
5 about today, as well as I feel like the January protocol order  
6 controls here, and it's an attempt to revisit that a month  
7 before confirmation.

8 But this newest emergency motion filed by Mr. Wright's  
9 client, it feels like, as I think I mentioned, the same type  
10 of motion dressed a little bit differently from entities  
11 controlled by Dondero rather than Dondero directly. And  
12 meanwhile, Mr. Wright has asked for a hearing next Tuesday.  
13 I'm not going to have three hearings on the same issue. So I  
14 guess I'll hear first from Mr. Dondero's counsel. I mean,  
15 what do you think I'm going to hear next Thursday that is  
16 going to change my mind about this was all covered in the  
17 January protocol order and I'm not going to revisit it a month  
18 before confirmation? Mr. Lynn, are you here to address that  
19 one?

20 MR. LYNN: Yes, Your Honor. First of all, I think  
21 the hearing is actually set for next Wednesday.

22 THE COURT: Okay.

23 MR. LYNN: Secondly, the motion filed by Mr. Wright,  
24 as I understand it, has to do with sales of assets by the CLOs  
25 that the Debtor manages as portfolio manager and not -- and

1 does not have to do with any sales of assets by the Debtor or  
2 its estate. So they're two different issues.

3 As I understand Mr. Wright's pleading, he is arguing that  
4 under the Advisers Investment Act, if I have that name right,  
5 that Mr. Seery, on behalf of the Debtor, ought not to ignore  
6 directions from or suggestions, requests, as they actually  
7 are, from investors in the CLOs with respect to the assets of  
8 the CLOs. That's entirely different from the concern that we  
9 are expressing with respect to sales of assets by the Debtor.

10 Secondly, while Mr. Dondero may have some influence on the  
11 CLOs, it is my understanding that the investors that Mr.  
12 Wright represents are governed by an independent board of  
13 directors, which Mr. Dondero may be on. I don't know whether  
14 he is or not.

15 Third, we are not trying to change the protocols. We do  
16 not believe anything in the protocols at all -- we've  
17 identified nothing in the protocols at all that says that the  
18 Debtor, and, by extension, Mr. Seery and the independent  
19 board, may take actions outside the ordinary course of  
20 business without notice and an opportunity for hearing before  
21 this Court.

22 We have asked in the alternative that if somehow the  
23 protocols authorize these actions, that the Court alter the  
24 protocols.

25 What triggered this, Your Honor, was a sale of an entity

1 known as SSP, which belonged to Trussway, which in turn  
2 belongs to the Debtor. We believe but we do not know for sure  
3 that the sale is below the price that could have been  
4 obtained. However, the sale was undertaken, as we understand,  
5 without competitive bidding, without notice -- certainly,  
6 there was no notice to Mr. Dondero -- and without an  
7 opportunity for anyone to be heard.

8 We do not think that the intention of the protocols was  
9 for this Court to abdicate its authority to oversee the  
10 Debtor's operations and to limit the authorities entitled to  
11 participate in decisions involving disposition of assets of  
12 major value, to limit the decision-makers to the independent  
13 board -- in particular, Mr. Seery -- and to limit it to the  
14 members of the Creditors' Committee, rather than providing  
15 notice generally to creditors, rather than providing a method  
16 for competitive bidding, rather than letting people know what  
17 is going on.

18 Your Honor has often stated, not just in this case, your  
19 concern that the process should be transparent. We believe  
20 that at this point the Debtor is attempting to use the  
21 protocols in an effort to avoid the transparency that  
22 creditors, equity interest owners, and most of all, this  
23 Court, are entitled to.

24 THE COURT: All right. Well, I don't know if anyone  
25 wants to respond to that, but --

1 MR. MORRIS: If I may, Your Honor.

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Just very briefly. I think I heard  
4 Judge Lynn say that there's nothing in the protocols that  
5 authorizes the Debtor to sell assets outside the ordinary  
6 course of business. And if he made that admission, I still  
7 don't see the point of this motion next week. All they're  
8 doing is questioning the Debtor's business judgment. They  
9 don't really have a right to do that. Mr. Dondero doesn't  
10 have a right to participate in the sale of those assets. The  
11 Debtor -- you know, there's no evidence before the Court,  
12 there will be no evidence before the Court, as to how the  
13 Debtor decided, what factors they considered when deciding to  
14 sell these assets. This is just completely improper.

15 (Echoing.)

16 Mr. Dondero personally participated in the corporate  
17 governance resolution last January. There has been no  
18 complaint by him or anybody else about the protocols, about  
19 the Debtor having operated outside the protocols. The Debtor  
20 is transparent. Every single month, we file monthly operating  
21 reports. You can see what's happening with assets, right? We  
22 work with the Committee. The Committee's not here joining in  
23 this motion. The Committee hasn't complained about the  
24 process. It's just Mr. Dondero. He's simply trying to  
25 exercise -- this is just another attempt to further exercise

1 control. He can make his motion. It will be denied because  
2 the facts simply don't support it.

3 THE COURT: Mr. Clemente, is it wrong of me to assume  
4 that you and your clients are very vigilant in paying  
5 attention to trades, transfers, outside the ordinary course?  
6 I assume since, again, you have a committee of sophisticated  
7 parties who are owed hundreds of millions of dollars, and you  
8 so heavily negotiated the January protocol order, that you're  
9 following it meticulously and paying attention to what's  
10 happening. Do you care to comment?

11 MR. CLEMENTE: Thank you, Your Honor. I do. Matt  
12 Clemente, for the record, on behalf of the Committee.

13 You're exactly right, Your Honor, and Your Honor actually  
14 touched on several things that I would have said earlier.

15 First of all, the Committee is made up of very  
16 sophisticated members, which makes my job sometimes easy and  
17 sometimes challenging, because they are very hands-on and they  
18 do understand the business of Highland and we did heavily  
19 negotiate the protocols early in the case, Your Honor, and  
20 they were designed with exactly these types of transactions in  
21 mind, so that the Debtor had to come to the Committee and lay  
22 out its case for a particular transaction.

23 With respect to the transaction at issue, that's exactly  
24 what happened, Your Honor. We're not going to get into,  
25 obviously, Committee deliberations, but I can tell you that

1 the protocols have been followed.

2 As Your Honor knows, when we've had an issue under the  
3 protocols, I remember several months ago when we argued about  
4 certain distributions being made, the Committee certainly was  
5 not shy about bringing it to Your Honor's attention.

6 So we have been very vigilant and very diligent in holding  
7 the Debtor accountable under the protocols. And we believe  
8 that -- although, again, when we've had an issue, we've come  
9 to Your Honor. We believe that the protocols have worked as  
10 they were intended to and as they were designed, Your Honor.

11 So I can assure you that the Committee has been very  
12 vigilant and the Committee will continue to be very vigilant.  
13 These issues were all raised in the context of negotiating the  
14 protocols. That was before Your Honor. Mr. Dondero was  
15 involved with that. It was very difficult negotiations, Your  
16 Honor.

17 But this does seem like somebody now trying to renegotiate  
18 what it was that the parties agreed to and Your Honor approved  
19 early on in this case.

20 So, Your Honor, rest assured, the Committee has been very  
21 vigilant and will continue to be very vigilant.

22 THE COURT: All right. And I guess the last thing  
23 I'll say on that point is, while of course we always want  
24 transparency --

25 (Interruption.)

1 THE COURT: While we, of course, always want  
2 transparency and notice and opportunity to object, I mean,  
3 these are not your typical run-of-the-mill assets. They're  
4 not a parcel of real property or a building somewhere or  
5 inventory somewhere or intellectual property. I mean, these  
6 are -- you know, again, we have a unique business here. And I  
7 think that was very much recognized in the process of  
8 negotiating the protocols, that this is not the type of  
9 business where you do a 363 motion on 21 days' notice any time  
10 you feel like, oh, today's a great day to trade this or that  
11 in whatever fund.

12 Well, we will go forward on this motion, because Mr.  
13 Dondero is entitled to his day in court to make his argument,  
14 put on his evidence, and try to convince me that this is not  
15 just trying to renegotiate something Mr. Dondero agreed to 11  
16 months ago on the eve of confirmation. But I want to make  
17 sure -- oh, we're getting --

18 (Echoing.)

19 (Clerk advises Court.)

20 THE COURT: Okay. You're on mute. You're on mute,  
21 Mr. Lynn.

22 MR. LYNN: Your Honor, may I explain briefly? This  
23 is very distressing. Mr. Morris says that it is the ordinary  
24 course of this Debtor's business to sell a subsidiary. This  
25 is not the ordinary course of the Debtor's business. There is

1 nothing in the protocols that says that the independent board  
2 and just the creditors on the Creditors' Committee may make  
3 decisions concerning major sales. We will present evidence to  
4 that effect when it occurs, and we believe strongly -- and I  
5 want to state, Your Honor, I didn't participate in  
6 negotiations of those protocols. I wasn't involved. And I've  
7 looked at them. There's nothing that says that this can occur  
8 without going to a hearing. And there is nothing in the  
9 protocols that defines ordinary course of business to involve  
10 this.

11 This motion was not filed because Mr. Dondero wanted to  
12 get in the way. It was filed because I thought it was the  
13 right thing to do because I thought that this was contrary to  
14 the way bankruptcy and Chapter 11 should work. And it was  
15 reasoned by me, with Mr. Dondero's consent. And I very, very  
16 much am upset to hear things people say that he's trying to  
17 get in the way with this. He is not. He's asking for  
18 something that is very, very, very reasonable. If they have  
19 nothing to hide, and I hope they don't and don't believe they  
20 do, but if the Debtor has nothing to hide, what is wrong with  
21 notice and a chance for hearing?

22 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.  
23 If I briefly may be heard.

24 THE COURT: Go ahead.

25 MR. POMERANTZ: I actually did negotiate the

1 protocols. And I think what Mr. Lynn is conflating is the  
2 Debtor selling Debtor assets and the Debtor acting in its  
3 management capacity to sell assets of entities it manages.

4 We will also present the case law that basically an entity  
5 that is not a debtor whose assets are being sold by the Debtor  
6 acting as a manager is not within the purview of this Court.

7 So Mr. Lynn can be frustrated, could be upset with what's  
8 happening, but we dealt with these issues last year. Because  
9 as Your Honor mentioned, this Debtor is not the typical  
10 debtor. And we had long negotiations with the Committee on  
11 what is ordinary course and what is not ordinary course. And  
12 as I mentioned to you the last time we were here, Your Honor,  
13 as I mentioned to you in January when we had this approved, we  
14 were not seeking to get authority to sell assets out of the  
15 ordinary course of business or do any transactions out of the  
16 ordinary course of business.

17 Mr. Lynn thinks that what's happening is out of the  
18 ordinary course of the business. This Court has said it's  
19 not. So we are prepared to go forward with the hearing.  
20 We've also spoken to the affiliated entities about putting  
21 their hearing on for the same date, because we also agree they  
22 -- both motions raise similar issues. And I think we're close  
23 to an agreement on having both of those motions heard at the  
24 same time on the 16th.

25 Thank you, Your Honor.

1 THE COURT: All right. So it's the 16th, Wednesday.  
2 Did we look that up, Nate?

3 THE CLERK: It's at 1:30.

4 THE COURT: It's at 1:30? All right. So we will go  
5 forward with the Dondero motion Wednesday, December 16th, at  
6 1:30, and we will go ahead and set the what I consider closely  
7 overlapping motion filed by the NexPoint entities and Highland  
8 Fixed Income Fund by Mr. Wright, we'll go ahead and set that  
9 at the same time.

10 Let me say this as clearly as I can. If there's going to  
11 be a challenge to the Debtor's business judgment, Mr. Dondero,  
12 he needs to be present at the hearing on video and he needs to  
13 testify, okay? I understand what Mr. Lynn said, that this was  
14 his idea, he thought the January protocol order violated the  
15 Bankruptcy Code, blah, blah, blah, but I am going to order  
16 that Mr. Dondero be present December 16th at 1:30 and testify.  
17 Okay?

18 So I've kind of modified that. I said if the business  
19 judgment of the Debtor is being challenged, but no, I'm  
20 broadening that. I think Mr. Dondero just needs to provide  
21 testimony on Wednesday. Given everything I heard today with  
22 the TRO request, and given that, in substance, he's -- he is  
23 challenging the Debtor's business judgment and the mechanism  
24 where the Committee oversees it, he just needs to testify.  
25 All right? So please convey that to him.

1 Now, Mr. Wright, I'm first going to ask, I know you  
2 weren't -- you were just listening in today, but do you want  
3 to say anything? I see you put your jacket on now. Thank  
4 you.

5 MR. WRIGHT: I did. I did find a jacket. I'm sorry,  
6 Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. WRIGHT: (muffled) So I, you know, I can address  
9 why we're asking for limited relief. I can also address the  
10 underlying motion, which (inaudible) some of -- in the  
11 underlying motion --

12 THE COURT: Okay. Your sound is very difficult to  
13 hear. Could you repeat what you just said? I didn't get it.

14 MR. WRIGHT: Yes, Your Honor. I'm happy to address  
15 our motion for an emergency hearing. I'm also happy to  
16 address the underlying motion we're asking be heard on an  
17 emergency basis. I didn't know, do you want me to address  
18 both or just the motion for why we're asking for emergency  
19 relief?

20 THE COURT: Well, I've gone ahead and said I will set  
21 it next Wednesday. It sounds like the Debtor saw the  
22 efficiencies maybe in having this one heard at the same time  
23 as the Dondero motion.

24 I have a couple of things I want to say for the benefit of  
25 you and your client, but I was giving you the chance to say

1 something first.

2 Here's what I'm thinking, going into this, so you can be  
3 prepared to address this next Wednesday. Your motion feels to  
4 me exactly like what we litigated *ad nauseam* in the Acis case.  
5 Now, if any of the Acis lawyers are on the line or Mr. Terry  
6 is on the line, I wonder if they are chuckling. And what I  
7 mean is -- I heard a chuckle. I don't know if that was Ms.  
8 Patel. We had hearings --

9 MS. PATEL: It was, Your Honor.

10 THE COURT: Okay. We had hearings in the Acis case.  
11 Remember, Acis was a portfolio manager for CLOs. And the  
12 party that was in the bottom tranche of the CLOs, okay, the  
13 equivalent, I think, to your clients here, the NexPoint  
14 entities and Highland Fixed Income Fund, we sometimes called  
15 them the subordinated debtholders or the equity-holders, that  
16 party -- it was a party named HCLOF -- began during the *Acis*  
17 case trying to do a call, trying -- redemption notice. Acis,  
18 liquidate these CLOs. We are -- we're done. We're tired.  
19 You know, we're outside the reinvestment period. We want you  
20 to liquidate. And started to kind of force that issue.  
21 Highland was the sub-manager of Acis at that time. So, guess  
22 what, the Chapter 11 trustee filed an adversary proceeding  
23 asking for TROs, saying, you know, this is the portfolio  
24 manager's discretion. And not only that, what they're doing  
25 isn't a reflection of reasonable business judgment because,

1 you know, we don't think it's the right time actually to  
2 liquidate these CLOs, they're just trying to deprive the  
3 portfolio manager of his stream of revenue for managing this.

4 So we had multiple hearings about this. I issued a TRO  
5 saying stop it, bottom tranche of the CLOs. It seems  
6 transparent you're just trying to deprive Acis, the portfolio  
7 manager, of value. And you know, irony, irony, it's like the  
8 backwards situation here. They were saying, but we're so late  
9 in the life of these CLOs, it makes sense to liquidate them.  
10 Why would you want to keep these things going? We're not  
11 violating the stay. We're not jacking with the estate value  
12 and trying to deprive Acis of its revenue stream. Anybody  
13 knows it makes sense to liquidate these late-in-life CLOs.  
14 Very ironic to me, although maybe it's not the situation,  
15 apples to apples, but here, you see what I'm saying, it feels  
16 like same situation, only flip-flopped. The portfolio manager  
17 here, Highland, is going to be engaged in liquidating the  
18 CLOs, and your client, bottom tranche of equity, is saying no,  
19 don't do that. You know, there's still value there.

20 Now, I will say, in my Acis case, the equity tranche, they  
21 kind of -- their theory evolved over time. They were like,  
22 well, we actually just want CLOs managed by Highland, a  
23 Highland entity, and Acis isn't a Highland entity.

24 So, bottom line, I issued a TRO. Stop it, equity tranche.  
25 This is not your call, it's the portfolio manager, and I think

1 you're just jacking with the portfolio manager to screw up the  
2 reorganization. And guess what, we even had then a  
3 preliminary injunction and then a plan injunction. And of  
4 course, there were bells and whistles on what would evaporate  
5 the injunction. But that's now on appeal to the Fifth  
6 Circuit.

7 So, you know, at my confirmation hearing at least in Acis,  
8 if not previous hearings, we even had expert witnesses and we  
9 pored through the language of the portfolio management  
10 agreements. And I don't know if here we have the same  
11 situation, but it was complicated in Acis because we had the  
12 portfolio management agreements between the CLO manager and  
13 the CLO issuers, but then there was a separate management  
14 agreement between the equity tranche and, I don't know, I  
15 can't remember who the counterparty to that one was. But  
16 there, there were multiple agreements, and you had to parse  
17 through it, and we had experts testifying about, you know,  
18 discretion of the equity-holder versus not, or portfolio  
19 manager, da, da, da, da, da. And I ruled as I ruled. I  
20 granted the injunction, to the detriment of the equity  
21 tranche. And maybe the Fifth Circuit one day will tell me I  
22 was wrong. You know, I really think it's a hard, hard, hard  
23 issue.

24 But I'm just telling you, that's how I ruled on, I think,  
25 three occasions.

1           Maybe the portfolio management agreements are worded  
2 differently here. You know, maybe -- maybe it's a different  
3 issue. But I will say I read your motion yesterday with  
4 frustration. I'm like, haven't I ruled on this like three  
5 times in the Acis case? And then, you know, maybe I haven't.  
6 Again, maybe, maybe the portfolio management agreements in  
7 this case would convince me differently. But were you aware  
8 of how I ruled in Acis?

9           MR. WRIGHT: Your Honor, I'm aware of the Acis case,  
10 but no, I wasn't aware that this particular issue was  
11 addressed in such depth.

12           THE COURT: Okay.

13           MR. WRIGHT: (muffled) I will, of course, go take a  
14 look at all those hearings. I anticipate that I'm going to  
15 try to draw some distinctions between my situation and the  
16 situations there, but I certainly will be prepared to address  
17 that next week.

18           I think the thing that I would say just very broadly is  
19 that we are not -- I think our request is very limited in what  
20 we're asking for. All we are asking for is that there is a  
21 temporary pause on the Debtor exercising its right as  
22 portfolio manager to direct sales that we don't agree with for  
23 a ten-day period. And we would then use that period of time  
24 to explore, either consensually or through rights that we  
25 (inaudible). And then in the process of looking at this, Your

1 Honor, under the documents effecting a transfer of portfolio  
2 management, you know, these documents, they're based on the  
3 rights of the preference holders.

4 You know, my client's concern is really about the, you  
5 know, the investment time window of claim today versus the  
6 funds, the relevant -- again, Mr. Macur (phonetic) -- my  
7 clients include two advisors that are, you know, that are  
8 ultimately I think controlled by a vehicle that Mr. Dondero  
9 controls, but also I have a few clients that are funds that  
10 are required by SEC rules, as I understand it, to have a  
11 majority independent board. So I dispute that they're a  
12 Dondero-controlled entity, but I understand that that's  
13 testimony (inaudible). But I -- that's -- that's not right.

14 And so the funds, --

15 THE COURT: Who are the board members?

16 MR. WRIGHT: I can have that for you next week, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. WRIGHT: I don't have it in front of me. But  
20 they're required by SEC rules to have a majority independent  
21 board. And so we -- the funds that are an advisor of my  
22 clients, they have a much longer-term investment horizon. So,  
23 you know, in my mind, I probably overly-simplistically  
24 analogize it to the difference between saving money for a  
25 house you intend to buy in a year and how you might invest

1 that versus saving money for retirement that you might do in  
2 20 years. And I think any investment advisor will tell you  
3 you're going to -- you're going to do that differently,  
4 because with a long horizon you can accept (inaudible) and  
5 bucket changes and stuff like that. When they go out a long  
6 time, you know, it'll be okay. And on a short horizon, you  
7 know, you need to sort of make sure you're holding onto what  
8 you have and just approach it differently.

9 Highland, under its plan, is intending to liquidate at the  
10 end of 2022, which that's -- that's fine. That's what they're  
11 intending to do. But that's a very different investment time  
12 horizon than my clients, and so we -- you know, and they're --  
13 they're proceeding to run, you know, their liquidations that  
14 way. I don't think that there's anything wrong with that.  
15 You know, that's their discretion. But we think that we'd be  
16 better served with a portfolio manager that is taking a long-  
17 term time horizon, which once was Highland but now not, given  
18 the bankruptcy case. And so, you know, we'd like to ask that  
19 -- and we're just -- we're really not -- we're not asking for  
20 a TRO. I think Mr. Morris (inaudible) a TRO. I understand  
21 that's their position. But I dispute it.

22 Highland is in bankruptcy, and so it's subject to the, you  
23 know, it's subject to the bankruptcy system and subject to the  
24 control of the Court. What we are asking would be for the  
25 Court to use its power under 363 and 1107 and 105 to tell

1 Highland rough -- for 30 -- within 30 days to figure out if  
2 they can replace you under the documents or if there can be a  
3 deal, as Mr. -- Mr. Bain mentions, there will be discussion of  
4 a (inaudible) to reach a consensual resolution in which the  
5 portfolio manager would change that would have to involve the  
6 CLOs and probably my clients and also the Debtor, probably, to  
7 see if we can get there. And, you know, if we can't, we  
8 can't. That's really the limited nature of what we're asking  
9 for now. It may be different than what you were describing in  
10 the Acis case. But again, I will go and read those cases and  
11 I will be prepared to address that more fully next week.

12 MR. POMERANTZ: I mean, Your Honor, this is Jeff  
13 Pomerantz, if I may briefly respond.

14 THE COURT: Go ahead.

15 MR. POMERANTZ: I think there's a fundamental problem  
16 with the argument that Mr. Wright just made. First of all,  
17 there are other investors and other people with interests in  
18 those CLOs. It's not Mr. Wright's clients only.

19 And also, the premise that the decisions that are being  
20 made in terms of liquidating those assets have to do with the  
21 Debtor's timeline on liquidation, just, you'll hear from Mr.  
22 Seery next week, is fundamentally incorrect. Mr. Seery is  
23 making decisions on behalf of Highland that he believes are  
24 within his fiduciary duty to the funds to maximize value.

25 So the whole premise of the argument that this is between

1 a long-term horizon and a short-term horizon is just  
2 incorrect. And there are other people that Mr. Seery has to  
3 worry about. He has a duty to the CLO, and just because one  
4 set of investors wanted to do certain things, they don't have  
5 that right. It's -- it's -- it wasn't lost on us that, in Mr.  
6 Wright's motion, he did not point to any language in any  
7 agreements that in any way give him that right.

8 So while we appreciate that these CLOs have to be  
9 addressed, and we have engaged in discussions with Mr.  
10 Wright's client and Mr. Bain's client to try to have a soft  
11 landing, they have not occurred yet. And in the interim, the  
12 Debtor has to do what it is obligated to do and act in a  
13 fiduciary manner and act consistent with the agreements.  
14 That's why we objected and we will be objecting to any  
15 moratorium on any of those efforts.

16 THE COURT: Okay. All right. So, Mr. Wright, I am  
17 also going to direct that you have a client witness to testify  
18 about these things. And I do want to understand, you know,  
19 who you're taking instructions from and who is on the board on  
20 these entities.

21 You know, we had a hearing before I think you were  
22 involved where the Committee was seeking discovery of  
23 documents, and a lot of the what I'm going to call Highland  
24 affiliates -- and I know people sometimes cringe when I use  
25 that word affiliates; you know, it may or may not meet the

1 Bankruptcy Code 101 definition of affiliate. But entities in  
2 the Highland umbrella, many of them resisted production of  
3 documents from the Committee. And I got concerned at that  
4 point in time of who is instructing the lawyers, because I  
5 felt like, in many instances -- not all, but in several  
6 instances -- you know, I was concerned it's in the estate's  
7 best interest to get these documents. You know, the Committee  
8 was the one seeking the documents, but we've got entities in  
9 the Highland umbrella resisting. And so it felt like there  
10 was a conflict. And if the same human beings were employees  
11 of the Debtor, and --

12       Anyway, I think we got through a lot of that, but I  
13 remember, in connection with all of that, looking at the list  
14 of Highland entities who filed proofs of claim in the  
15 bankruptcy case. And I remember asking, in some cases, like,  
16 who filed the proof of claim, and I was told that Mr.  
17 Dondero's counsel prepared a lot of these proofs of claim of  
18 the different entities. And at least signatories, I saw that  
19 Frank Waterhouse has signed the proofs of claim at least for  
20 NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic  
21 Opportunities Fund.

22       Anyway, we had a discussion about my concerns about  
23 conflicts back around that time, but here's what I'm getting  
24 at. I'm worried all over again about do we have any human  
25 beings involved calling the shots for your client, Mr. Wright,

1 that have fiduciary duties to the Debtor, and maybe this is  
2 getting in conflict with that. I just don't know. I just  
3 don't know. But it's concerning to the Court. So, what would  
4 help is if we have a human being testify for your clients so  
5 we can clear the air on that one. Okay?

6 So, next Wednesday, December 16th, at 1:30, we'll have a  
7 hearing on the Dondero motion and on these NexPoint motions of  
8 your client, Mr. Wright. And we're going to have a witness  
9 for Mr. Wright's client and we're going to have a witness --  
10 and we're going to have Dondero being a witness. And Mr.  
11 Morris is going to upload your TRO, and we're going to have a  
12 follow-up hearing on January 4th on the preliminary injunction  
13 request.

14 All right. So, anything else?

15 MR. MORRIS: Yes, Your Honor. It's John Morris for  
16 the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO  
17 --

18 THE COURT: Okay.

19 MR. MORRIS: -- and CRO. And if it pleases the  
20 Court, he would just like to spend a moment giving the Court  
21 an update as to where he is in the process.

22 THE COURT: Thank you. He may.

23 MR. MORRIS: Is that okay?

24 THE COURT: Uh-huh.

25 MR. MORRIS: Okay.

1 MR. SEERY: Thank you, Your Honor. Can you hear me?

2 THE COURT: Yes.

3 MR. SEERY: I appreciate the Court's time. I think  
4 with the overlapping motions it would be useful just to tick  
5 through very quickly, not to take too much of your time, where  
6 we are and why some of these things have come before you in  
7 the last couple days.

8 First, as you're aware, we have a plan out for a vote. We  
9 believe we're going to get confirmed. We believe we'll get  
10 the votes. We're still waiting on the votes. And we're still  
11 working on claims. So, as we speak, including even this  
12 morning, trying to resolve certain of the other open claims.

13 The Debtor is still managing its assets. And what that  
14 means is we're addressing financing with underlying assets  
15 that are in portfolio companies. We are addressing our own  
16 debtor-owned assets, some of which we are selling in the  
17 ordinary course. So, for example, securities. Where we have  
18 securities in an account, we have been selling those where we  
19 think the market opportunity was ripe.

20 Up until mid-March, Mr. Dondero controlled those accounts.  
21 He was the portfolio manager. We took them away after they  
22 lost considerable amounts of money, about ninety million  
23 bucks. Real money. So we took over control of those accounts  
24 since then, and we've been managing to sell them down to  
25 create cash where we think the market opportunity is correct.

1 With respect to subsidiaries, we don't have any plans to  
2 sell any PV assets now. These are companies that are part-  
3 owned, either directly or indirectly, through subsidiaries,  
4 with a number of other (inaudible) who are interest holders.

5 SSP, for example, there's been a lot of noise this  
6 morning, no real facts. I will tell you that we did sell SSP.  
7 We did it in conjunction, as Mr. Clemente indicated, with the  
8 Committee. We looked at number of bids. That entity was a  
9 private-equity-owned asset. We believe that it was sold  
10 appropriately. It wasn't selling an asset of the estate. It  
11 was actually a thrice-removed asset, also with other interest  
12 holders, including mostly completely independent, including  
13 SIBC -- SBIC owners who wanted to choose off that asset as  
14 well. We believe we got a very good price and executed that  
15 well. Happy to litigate and defend that at any time.

16 The CLOs, we're the manager of the CLOs. What we're  
17 trying to do in our plan is assign CLOs back to NexPoint  
18 Advisors. The reason for that is, while they do generate  
19 income, we didn't believe that the income was enough to  
20 justify us maintaining them. They would not be assets that we  
21 would continue to hold through the case. Or through the  
22 liquidation. Unclear whether NexPoint wants those assets now  
23 back or not. We have been working, as Mr. Bain indicated,  
24 closely with the Issuers and the Issuers' counsel, because  
25 there's very particular, specific ways to deal with those

1 assets under the documents that protect the various investors.  
2 As Mr. Morris pointed out, entities related, controlled by,  
3 managed by Mr. Dondero are not the only investors in these  
4 CLOs. Our duty is to the CLOs. We believe that we are  
5 adhering to that duty. We are happy to at some day litigate  
6 that.

7 With respect to asset sales, the Debtor has a team that  
8 manages these assets. The team came to me to sell certain  
9 assets. Mr. Dondero, NexPoint Advisors, they don't monitor  
10 these assets. They don't know anything about them. The  
11 assets we're talking about are loans, though the Debtor hasn't  
12 sold any of those, or securities that trade, equity securities  
13 that trade in the liquid markets. These are securities, you  
14 can go on the screen, you can go on Yahoo Finance and see how  
15 they trade.

16 Our team came to us and suggested that we sell some. I  
17 sat down with the analyst and the analyst suggested we sell.  
18 The manager of the day-to-day operations of CLOs suggested we  
19 sell. We set the sell notice within the context of the  
20 market. This wasn't a dumping. We thought that the market  
21 would support what we were doing, and it did.

22 Another asset that we were going to sell is an asset we  
23 don't have an analyst on. Haven't had one for years,  
24 apparently. It's not very much money. Mr. Dondero's related  
25 entities don't hold very much of the interests in the CLOs

1 that have that. They have debt which is owned by third  
2 parties. It's a good trade, in our opinion. Our analysis was  
3 it made sense to sell it within the context of the market.  
4 The Equity has no decision as to whether we do that. We're  
5 the manager.

6 Mr. Wright's example and his offer is, frankly, silly. If  
7 those public funds want to indemnify the Debtor and CLOs for  
8 any potential losses, that would be great, we can do that, we  
9 can talk about that, how to arrange that.

10 As to the pot plan, nobody has worked harder on the pot  
11 plan -- and I include Mr. Dondero -- than I have. Nobody. I  
12 didn't do it because I was trying to help Mr. Dondero. I  
13 thought it would be in the best interest of the estate, which  
14 means the creditors, the employees, and the investors whose  
15 funds we manage, to try to get a consensual deal done. So  
16 far, we've been unable to do that. In my declaration, there's  
17 a footnote. Not only did I help work on the idea, I actually  
18 drafted the term sheet. (inaudible) to do it, I presented it  
19 to the Creditors' Committee. Not that I wanted to do it. I  
20 thought they should do it. I did it. No one has worked  
21 harder for that.

22 The employees, unbelievably frustrated to hear that. Mr.  
23 Dondero put this company into bankruptcy. Our management of  
24 this estate has required that we fight with a lot of folks  
25 about keeping the team together. Again, we did it, not so

1 much for the individual team members, but we thought that  
2 would be the best way to enhance value for the estate and it  
3 would encourage an alternative plan that could be value-  
4 maximizing.

5       The employees have deferred compensation. That was all  
6 set up by Mr. Dondero. The money that was taken out and used  
7 in this -- by this company for other things rather than paying  
8 employees cash on a regular basis was used by Mr. Dondero well  
9 before I ever came into this case. If there are repercussions  
10 to employees because we are liquidating this entity or  
11 monetizing these assets, and because we have to do it through  
12 this vehicle, Mr. Dondero can stay in the mirror and not  
13 abort. It's very insulting and frustrating to hear that from  
14 counsel, who doesn't understand a thing about what we've done  
15 to try to keep the business together.

16       The CLO part of the business, we'd like to assign. We  
17 would like to assign as many of the employees over to help  
18 manage the business and have those go to Mr. Dondero's  
19 entities. And that's fine with us. You know, that is a  
20 concrete benefit to him, because it's also beneficial to the  
21 estate. We're not in the anger business. We are independent.  
22 The only thing that makes us angry is that when somebody just  
23 makes up noise, not facts, just statements that have no basis  
24 in reality of what's happened in this case, when we're trying  
25 to hold it together and come to a conclusion.

1           Sorry if I sound frustrated, Your Honor, because I really  
2 am, and I thought you should see that going forward before we  
3 go into next week. If the NexPoint entities want the CLOs,  
4 let's just work on that transfer. We have Mr. Bain and his  
5 clients. They are very good. They are CLO specialists. His  
6 co-counsel at Schulte is renowned in this space. We will work  
7 through it and make sure it works for the Issuers, make sure  
8 it works for NexPoint, and of course make sure it works for  
9 the estate.

10           Thank you, Your Honor.

11           THE COURT: All right. Mr. Seery, I really  
12 appreciate these comments. They've been very helpful to my  
13 thinking. In fact, I want to make sure it's under oath in  
14 case I ever want to take judicial notice of anything you've  
15 said just now. Do you solemnly swear or affirm that the  
16 statements you made were true and correct today, so help you  
17 God?

18           MR. SEERY: I do, Your Honor.

19           THE COURT: All right.

20           MR. SEERY: And just to be clear, if I ever make a  
21 statement to the Court, I consider it under oath.

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

23           All right. So, again, I feel like that was so very  
24 helpful. And, you know, this is a precise example of why I am  
25 directing, if Mr. Dondero is going to urge a position with the

1 Court next Wednesday, he needs to testify. And if NexPoint,  
2 through whoever their decision-maker is, is wanting to urge a  
3 position to the Court, they need a human being to testify.  
4 And I'll hear Seery and I'll hear Dondero and I'll hear  
5 whoever that person is, and that's what's going to matter, you  
6 know, most to me. Yeah, we have some legal issues, certainly,  
7 but I like to hear business people explain things, no offense  
8 to the lawyers. But it's always very helpful to hear the  
9 business people in addition to the lawyers. All right. So,  
10 Mr. Morris, you're going to upload that TRO for me.

11 MR. MORRIS: Yes, Your Honor.

12 THE COURT: Mr. Wright, you can upload your order  
13 setting your motion for hearing next Wednesday at 1:30. And I  
14 think we have our game plan for now. Anything else? All  
15 right. We're adjourned.

16 THE CLERK: All rise.

17 (Proceedings concluded at 11:33 a.m.)

18 --oOo--

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript to  
22 the best of my ability from the electronic sound recording of  
the proceedings in the above-entitled matter.

23 **/s/ Kathy Rehling**

**12/11/2020**

24

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

\_\_\_\_\_  
Date

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INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
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19  
20  
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23  
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PROCEEDINGS

3

WITNESSES

-none-

EXHIBITS

Debtor's Exhibits

Received 14

RULINGS

21/36/39/48

END OF PROCEEDINGS

57

INDEX

58

**TAB 4**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

**United States Bankruptcy Judge**

Signed December 10, 2020

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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj1
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding
vs.	§	
JAMES D. DONDERO,	§	No. 20-03190-sgj
Defendant.	§	

**ORDER GRANTING DEBTOR'S MOTION  
FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO**

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



*Preliminary Injunction against James Dondero* [Docket No. 6] (the “Motion”), the *Memorandum of Law* (the “Memorandum of Law”)<sup>2</sup> in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor’s Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the “Seery Declaration”), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero’s counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor’s

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").<sup>3</sup>

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

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<sup>3</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

**TAB 5**

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State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

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.** §  
§  
v. §  
§  
**JAMES D. DONDERO,** § Adversary No. 20-03190  
§  
**Defendant.** §

**JAMES DONDERO’S EMERGENCY MOTION TO  
MODIFY TEMPORARY RESTRAINING ORDER**

James D. Dondero (“Defendant”), the defendant in the above-captioned adversary proceeding, hereby files this *Emergency Motion to Modify Temporary Restraining Order* (the “Motion”). In support thereof, Defendant respectfully represents as follows:



## I. BACKGROUND

1. On October 16, 2019 (the “Petition Date”), Highland Capital Management, L.P. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s Bankruptcy Case to this Court [Docket No. 186].

4. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

5. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor’s general partner, Strand Advisors, Inc. (the “Board”). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor’s Chief Executive Officer.

6. On December 7, 2020, the Debtor commenced this adversary proceeding by filing *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Dkt. 1] (the “Complaint”).

7. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital Management, L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary*

*Injunction Against Mr. James Dondero* [Adv. Dkt. 2] (the “TRO Motion”).

8. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor’s Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the “TRO”).

9. Among other things, the TRO temporarily restricts Defendant from “communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero’s counsel and counsel for the Debtor are included in any such communication.”

10. In addition, the Debtor, through counsel, has indicated that Defendant cannot converse with the Board absent prior approval of the subjects he wishes to address.

## **II. RELIEF REQUESTED AND BASIS FOR RELIEF**

11. While Defendant does not at this juncture contest this restriction, he respectfully requests that the Court modify this provision of the TRO so that he may gain access to the Board and can communicate with the Board regarding the terms of his proposed “Pot Plan” that would see the continuation of the Debtor’s business as a going concern and save many of the Debtor’s employees from their impending termination. The plan would involve a substantial infusion of cash from the Defendant for the benefit of Debtor’s creditors. Defendant has been diligently negotiating with creditors and the Debtor to come to terms of such a plan, but as the Court is aware, no agreement has yet been reached. Defendant believes the Pot Plan has the potential to be the best outcome for this case and desires to continue his advocacy for this plan. With the TRO’s restriction on his access to, and communication with, the Board, however, Defendant will be severely constrained in his efforts to achieve this grand bargain.

12. Accordingly, by this Motion, Defendant respectfully requests that the Court modify

the TRO to grant Defendant access to the Board and allow Defendant to communicate with the Board regarding his Pot Plan and the Debtor's reorganization, unless otherwise ordered by the Court.

13. Rule 65(b)(4) of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rule 7065 of the Federal Rules of Bankruptcy Procedure, provides that, "on 2 days' notice to the party who obtained the order without notice,—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order." Fed. R. Civ. P. 65(b)(4).

14. Here, good cause exists for the Court to modify the TRO to grant Defendant access to the Board and to allow him to communicate with the Board regarding his Pot Plan. With the other TRO restrictions in place, the carving out of a limited exception for ready access to, and communication with, the Board on the terms established in the TRO protects the Debtor and the Board while allowing Defendant to continue his advocacy for a plan that may ultimately save the Debtor's business and provide a greater return to creditors and equity holders. Defendant regrets the prior communications made to the Board and, if the Court grants this Motion, agrees to limit his communication with the Board to matters relating to the affairs of Strand Advisors, Inc. ("Strand"), his Pot Plan, and the Debtor's reorganization.

15. Defendant is the sole owner of Strand, the entity for which the Board serves. As the owner of Strand (which, in turn, has an equity interest in the Debtor and controls its conduct), Defendant believes he has an interest in communicating with the Board and it would be equitable to grant him access to the Board to discuss matters relating to Debtor's reorganization, the terms of the Pot Plan, and the affairs of Strand.

16. Defendant will agree to any additional conditions or restrictions the Court may

impose in the event the Court decides to grant the limited relief requested by this Motion.

**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court enter an order (i) granting this Motion, (ii) modifying the TRO to provide Defendant access to the Board to communicate with them solely as to the affairs of Strand, the terms of the Pot Plan, and the Debtor’s reorganization, unless otherwise ordered by the Court, and (iii) granting Defendant such other and further relief to which he may be justly entitled.

Dated: December 16, 2020

Respectfully submitted,

/s/ D. Michael Lynn

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
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**ATTORNEYS FOR DEFENDANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on December 16, 2020, a true and correct copy of the foregoing document was served via the Court’s CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

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. §

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§  
HIGHLAND CAPITAL MANAGEMENT, L.P., §  
§  
Plaintiff. §  
§  
v. §  
§ Adversary No. 20-03190  
JAMES D. DONDERO, §  
§  
Defendant. §

**ORDER GRANTING JAMES DONDERO’S EMERGENCY  
MOTION TO MODIFY TEMPORARY RESTRAINING ORDER**

Having considered *James Dondero’s Emergency Motion to Modify Temporary Restraining Order* (the “Motion”)<sup>1</sup> filed by Defendant James Dondero (“Defendant”); and this Court having

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that good and sufficient cause exists to grant the relief requested in the Motion; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. Subject to the terms of the TRO, Defendant may communicate directly with the Board solely as to the affairs of Strand, the terms of the Pot Plan, and the Debtor's reorganization.
3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

**TAB 6**

D. Michael Lynn  
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

**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.** §  
§  
**v.** § **Adversary No. 20-03190**  
§  
**JAMES D. DONDERO,** §  
§  
**Defendant.** §

**NOTICE OF WITHDRAWAL**

**PLEASE TAKE NOTICE THAT** James Dondero hereby **WITHDRAWS** the following document:

1. *Emergency Motion to Modify Temporary Restraining Order* [Docket No. 24].



Dated: December 23, 2020

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
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Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR DEFENDANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on December 23, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

**TAB 7**

PACHULSKI STANG ZIEHL & JONES LLP  
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*Counsel for Highland Capital Management, L.P.*

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	No. 20-3190-sgj11
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



**PLAINTIFF’S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO  
SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR  
VIOLATING THE TRO**

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”) and the debtor and debtor-in-possession (the “Debtor” or “Highland”) in the above-captioned chapter 11 case (“Bankruptcy Case”), by and through its undersigned counsel, files this motion (the “Motion”) seeking entry of an order requiring Mr. James Dondero (hereinafter, “Mr. Dondero”) to show cause why he should not be held in civil contempt for violating the Court’s *Order Granting Debtor’s Motion for a Temporary Restraining Order against James Dondero* (Adv. Pro. Docket No. 10) (the “TRO”). In support of the Motion, the Debtor respectfully states the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 7065 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**RELIEF REQUESTED**

4. The Debtor requests that this Court issue the proposed form of order to show cause, attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a) and 362(a) of the Bankruptcy Code and Rules 7001 and 7065 of the Bankruptcy Rules.
5. The evidence and arguments supporting the Motion are set forth in the Debtor’s *Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to*

*Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the “Memorandum of Law”), and the *Declaration of John A. Morris in Support of the Debtor’s Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the “Morris Declaration”), and the exhibits annexed thereto, filed contemporaneously with this Motion. For the reasons set forth the Memorandum of Law, the Debtor requests that the Court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC, within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor’s estate an amount of money equal to two times the Debtor’s actual expenses incurred in bringing this Motion, payable within three calendar days of presentment of an itemized list of expenses; (iv) impose a penalty of three times the Debtor’s actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, (b) the Morris Declaration, and (c) the Debtor’s *Motion for Expedited Hearing on Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the “Motion to Expedite”).

7. Based on the exhibits annexed to the Morris Declaration, and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Mr. Dondero. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 7, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*/s/ Zachery Z. Annable*

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*Counsel for Highland Capital Management, L.P.*

## **EXHIBIT A**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adversary Proceeding No.  
§  
§ No. 20-3190-sgj11  
§  
§  
§  
§

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**ORDER GRANTING PLAINTIFF’S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO**

Having considered (a) the Debtor’s *Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. \_\_\_] (the “Motion”); <sup>2</sup> (b) the Debtor’s *Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. \_\_\_] (the “Memorandum of Law”); (c) the exhibits annexed to the *Declaration of John A. Morris in Support of the Debtor’s Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. \_\_\_] (the “Morris Declaration”); and (d) all prior proceedings relating to this matter, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. 6] (the “TRO Hearing”) and the hearing (the “Restriction Motion Hearing”) on the *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Bankr. Case Docket No. 1528] that was brought by certain financial advisory firms and investment funds that are represented by the law firm K&L Gates (collectively, the “K&L Gates Clients”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sanctions are warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. Mr. Dondero shall show cause before this Court on **Friday, January 8, 2021 at 9:30 a.m. (Central Time)** why an order should not be granted: (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (*e.g.*, responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (iv) granting the Debtor such other and further relief as the Court deems just and proper under the circumstances.
3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

**TAB 8**

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.,	)	Friday, January 8, 2021
	)	9:30 a.m. Docket
Debtor.	)	
<hr/>		
HIGHLAND CAPITAL	)	<b>Adversary Proceeding 20-3190-sgj</b>
MANAGEMENT, L.P.,	)	
	)	
Plaintiff,	)	PRELIMINARY INJUNCTION
	)	HEARING [#2]
v.	)	
JAMES D. DONDERO,	)	
	)	
Defendant.	)	
<hr/>		

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

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor/Plaintiff: Jeffrey N. Pomerantz  
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For the Debtor/Plaintiff: John A. Morris  
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1 APPEARANCES, cont'd.:

2 For James Dondero,  
3 Defendant:

D. Michael Lynn  
John Y. Bonds, III  
Bryan C. Assink  
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7 For the Official Committee  
8 of Unsecured Creditors:

Matthew A. Clemente  
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10 For the Funds and  
11 Advisors:

Davor Rukavina  
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20 Transcribed by:

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25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 8, 2021 - 9:41 A.M.

2 THE COURT: All right. We are here for Highland  
3 Capital Management, L.P. versus James Dondero, a preliminary  
4 injunction hearing. This is Adversary 20-3190.

5 All right. Let's start out by getting appearances from  
6 counsel. First, for the Plaintiff/Debtor, who do we have  
7 appearing?

8 MR. MORRIS: Your Honor, John Morris; Pachulski Stang  
9 Ziehl & Jones. I'm here with my partner, Jeff Pomerantz, and  
10 others.

11 THE COURT: All right. Good morning. All right.  
12 For Mr. Dondero, who do we have appearing?

13 MR. LYNN: Michael Lynn, together with John Bonds,  
14 for Mr. Dondero.

15 THE COURT: Good morning.

16 All right. I know we have a lot of parties in interest  
17 represented on the video or phone today. I'm not going to go  
18 through a roll call, other than I'll see if we have the  
19 Committee, the Unsecured Creditors' Committee counsel on the  
20 line. Do we have anyone appearing for them?

21 MR. CLEMENTE: Yes, good morning, Your Honor.  
22 Matthew Clemente from Sidley Austin on behalf of the  
23 Committee.

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

25 MR. CLEMENTE: Thank you, Your Honor.

1 THE COURT: Well, as I said, I'm not going to do a  
2 roll call. I don't think we had any specific parties in  
3 interest, you know, file a pleading, or any other parties  
4 other than the Debtor and Mr. Dondero in this adversary. So  
5 I'll just let the others kind of listen in without appearing.

6 All right. Mr. Morris, are you going to start us off this  
7 morning with, I don't know, an opening statement or any  
8 housekeeping matters?

9 MR. MORRIS: I have both an opening statement and  
10 housekeeping matters. I just wanted to see if Mr. Pomerantz  
11 has anything he wants to convey to the Court before I begin.

12 MR. POMERANTZ: (garbled)

13 THE COURT: Mr. Pomerantz, if you could take your  
14 device off mute, please.

15 THE CLERK: He's off mute. I don't know what --

16 THE COURT: Okay. Well, we're showing you're not on  
17 mute, but we can't hear you. What now?

18 THE CLERK: He's not on mute now. He's --

19 THE COURT: Okay. Go ahead, Mr. Pomerantz.

20 (Pause.)

21 THE CLERK: He's not coming through.

22 THE COURT: We're -- you're not coming through, and  
23 we're not sure what the problem is. We're not showing you on  
24 mute.

25 (Pause.)

1 THE COURT: All right. Should we have him call back  
2 in on his phone? All right. If you could, if you have a  
3 phone, maybe you can try calling in on your phone and speak  
4 through your phone, not your computer.

5 MR. MORRIS: You know what, Your Honor? I'm going to  
6 proceed, and Mr. Pomerantz will address the Court at the  
7 conclusion of the hearing on the motion.

8 THE COURT: Okay. Very good. We usually hear him  
9 loud and clear, so I don't know what's going on this morning.  
10 Go ahead, Mr. Morris.

11 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

12 MR. MORRIS: Yes. Thank you very much, Your Honor.  
13 John Morris; Pachulski Stang; for the Debtor.

14 We are here this morning, Your Honor, on the Debtor's  
15 motion for preliminary injunction against Mr. Dondero. We  
16 filed last night also an emergency motion for an order to show  
17 cause as to why this Court should not hold Mr. Dondero in  
18 contempt of court --

19 THE COURT: All right.

20 MR. MORRIS: -- for violating a previously-issued  
21 TRO.

22 THE COURT: Yes. Let me just interject, in case  
23 there's any confusion by anyone. I am not going to hear the  
24 motion for show cause order this morning. While I understand  
25 you think there might be some efficiency and overlap in

1 evidence, it's not enough notice. So we'll talk about  
2 scheduling that at the end of the presentations this morning.  
3 All right?

4 MR. MORRIS: Thank you for addressing that, Your  
5 Honor.

6 THE COURT: Okay.

7 MR. MORRIS: Your Honor, then let's just proceed  
8 right to the preliminary injunction motion. There is ample  
9 evidence to support the Debtor's motion for a preliminary  
10 injunction. There would have been substantial evidence to  
11 support it based on the conduct that occurred prior to the  
12 issuance of the TRO, but the conduct that did occur following  
13 the TRO only emphasizes the urgent need for an injunction in  
14 this case.

15 I want to begin by just telling Your Honor what evidence  
16 we intend to introduce here today. We filed at Docket 46 in  
17 the adversary proceeding our witness and exhibit list. The  
18 exhibit list contains Exhibits A through Y. And at the  
19 appropriate time, I will move for the admission into evidence  
20 of those exhibits.

21 The exhibit list and the witness list also identifies  
22 three witnesses for today. Mr. Dondero. Mr. Dondero is here  
23 today. Notwithstanding Your Honor's comments on December 10th  
24 and on December 16th, when I deposed him on Tuesday he was  
25 unsure whether he was going to come here today to testify.

1 And he will inform Your Honor of that on cross-examination.

2 And so the Debtor was forced to prepare and serve a subpoena  
3 to make sure that he was here today. But Mr. Dondero is here  
4 today.

5 Following the conclusion of Mr. Dondero's deposition on  
6 Tuesday, and based in part on the evidence adduced during that  
7 deposition, the Debtor terminated for cause Scott Ellington  
8 and Isaac Leventon. We had asked counsel for those former  
9 employees to accept service of a trial subpoena so that they  
10 would appear today. We were told that they would do so if we  
11 gave them a copy of the transcript of Mr. Dondero's  
12 deposition.

13 We thought that was inappropriate and we declined to do  
14 so, and they declined to accept service of the subpoenas. We  
15 have spent two days with a professional process server  
16 attempting to effectuate service of the trial subpoenas for  
17 Mr. Ellington and Mr. Leventon, but we were unsuccessful in  
18 doing that. So we'll only have one witness today, unless we  
19 have cause to call anybody on rebuttal, and that witness will  
20 be Mr. Dondero.

21 I want to talk for a few moments as to what Mr. Dondero  
22 will testify to and what the evidence will show. Mr. Dondero  
23 will testify that he never read the TRO, Your Honor. He will  
24 testify that he didn't participate in the motion on the  
25 hearing for the TRO, that he never read Mr. Seery's

1 declaration in support of the Debtor's motion for the TRO,  
2 that he never bothered to read the transcript of the  
3 proceedings on December 10th so that he could understand the  
4 evidence that was being used against him. He had no knowledge  
5 of the terms of the TRO when he was deposed on Tuesday.

6 And that's the backdrop of what we're doing here today,  
7 because he didn't know what he was enjoined from doing, other  
8 than speaking to employees. He actually did testify and he  
9 will testify that he knew he wasn't supposed to speak with the  
10 Debtor's employees, but he spoke with the Debtor's employees  
11 in all kinds of ways, as the evidence will show.

12 The evidence will also show that Mr. Dondero violated the  
13 TRO by throwing away the cell phone that the company bought  
14 and paid for after the TRO was entered into. He's going to be  
15 unable to tell you who threw it away. He's going to be unable  
16 to tell you who gave the order to throw it away. He's going  
17 to be unable to tell you when after the TRO was entered the  
18 phone was thrown away.

19 But we do have as one fact and as I believe one violation  
20 of the TRO --

21 MR. POMERANTZ: So, I'm on a WebEx.

22 MR. MORRIS: Jeff, --

23 THE COURT: Mr. Pomerantz, we heard you. We heard  
24 you say something. So, apparently, you got your audio  
25 working.

1 All right. Mr. Morris, continue.

2 MR. MORRIS: Yeah. And what Mr. Dondero may tell  
3 you, Your Honor, is that it's really Mr. Seery's fault that  
4 the phone got thrown away, because Mr. Seery announced that  
5 all of the employees were going to be terminated at the end of  
6 January, and because Mr. Seery did that, he and I believe Mr.  
7 Ellington thought it was appropriate to just throw their  
8 phones away, without getting the Debtor's consent, without  
9 informing the Debtor, and switching the phone numbers that  
10 were in the Debtor's account to their own personal names. So  
11 that's Item No. 1.

12 Item No. 2 -- and this is in no particular order, Your  
13 Honor. I don't want you to think that I'm bringing these  
14 things up in terms of priority. But they're just the order in  
15 which they came up in the deposition, and so I'm just  
16 following it as well.

17 Item No. 2 is trespass. On December 22nd, you will hear  
18 evidence that Mr. Dondero personally intervened to yet again  
19 stop trades that Mr. Seery was trying to effectuate in his  
20 capacity as portfolio managers of the CLOs. He did that just  
21 six days after Your Honor dismissed as frivolous a motion  
22 brought by the very Advisors and Funds that he owns and  
23 controls.

24 Therefore, the very next day, the Debtor sent him a  
25 letter, sent through counsel a letter, evicting him from the

1 premises, demanding the return of the phone, and telling him  
2 that he had to be out by December 30th.

3 I was stunned, Your Honor, stunned, when I took his  
4 deposition on Tuesday and he was sitting in Highland's  
5 offices. He hadn't asked for permission to be there. He  
6 hadn't obtained consent to be there. But he just doesn't care  
7 what the Debtor has to say here. He just doesn't.

8 I don't know when he got there or when he left. I don't  
9 know if he spoke to anybody while he was there. But he just  
10 took it upon himself to show up in the Debtor's office,  
11 notwithstanding the very explicit eviction notice that he got  
12 on December 23rd.

13 Mr. Dondero, as I mentioned, clearly violated the TRO by  
14 knowingly and intentionally and purposely interfering with the  
15 Debtor's trading as the portfolio manager of the CLOs. This  
16 has just gone on too long. There have been multiple hearings  
17 on this matter, but he doesn't care. So he gave the order to  
18 stop trades that Mr. Seery had effectuated. That's a clear  
19 violation of the TRO, and it certainly supports the imposition  
20 of a preliminary injunction.

21 Mr. Seery -- Mr. Dondero is going to testify that multiple  
22 letters -- that I'm going to refer to them, Your Honor, as the  
23 K&L Gates Parties, and those are the two Advisors and the  
24 three investment funds and CLO Holdco that are all owned and/  
25 or controlled by Mr. Dondero -- after that hearing on the

1 16th, K&L Gates, the K&L Gates Parties sent not one, not two,  
2 but three separate letters. They said they may take steps to  
3 terminate the CLO management agreements. After we evicted Mr.  
4 Dondero, sent a letter suggesting that we would be held liable  
5 for damages because we were interfering with their business.

6 And Mr. Dondero is going to tell you, Your Honor, that he  
7 encouraged the sending of those letters, that he approved of  
8 those letters, that he thought those letters were the right  
9 things to send to the Debtor, even after -- even with the  
10 knowledge of what happened on December 16th.

11 He's going to tell you he knew about that hearing and he  
12 still, he still approves of those letters, and never bothered  
13 to exercise his control to have those letters withdrawn upon  
14 the Debtor's request. We asked them to withdraw it, and when  
15 they wouldn't do it, Your Honor, that's what prompted the  
16 filing of yet another adversary proceeding. And we're going  
17 to have another TRO hearing next Wednesday because they won't  
18 stop.

19 Next, a preliminary injunction should issue because Mr.  
20 Dondero violated the TRO by communicating with the Debtor's  
21 employees to coordinate their legal strategy against the  
22 Debtor. The evidence will show, in documents and in  
23 testimony, that on December 12th, while he was prohibited from  
24 speaking to any employee except in the context of shared  
25 services, you're going to see the documents and you're going

1 to hear the evidence that on December 12th Scott Ellington was  
2 actively involved in identifying a witness to support Mr.  
3 Dondero's interests at the December 16th hearing.

4 You will receive evidence that on December 15th Mr.  
5 Ellington and Mr. Leventon collaborated with Mr. Dondero's  
6 lawyers to prepare a common interest agreement.

7 You will hear evidence that on the next day, December  
8 16th, the day of that hearing, that Mr. Dondero solicited Mr.  
9 Ellington's help to coordinate all of the lawyers representing  
10 Mr. Dondero's interests, telling Mr. Ellington that he needed  
11 to show leadership, and Mr. Ellington readily agreed to do  
12 just that.

13 You will hear evidence that on December 23rd Mr. Ellington  
14 and Grant Scott communicated in connection with calls that  
15 were being scheduled with Mr. Dondero and with K&L Gates, the  
16 very K&L Gates Clients who filed the frivolous motion that was  
17 heard on December 16th and that persisted in sending multiple  
18 letters threatening the Debtor thereafter.

19 You will hear evidence that late in December Mr. Dondero  
20 sought contact information for Mr. Ellington and Mr.  
21 Leventon's lawyer, and he will tell you that he did it for the  
22 explicit purpose of advancing their mutual shared interest  
23 agreement, while they were employed by the Debtor. While they  
24 were employed by the Debtor.

25 Finally, you will hear evidence, and it will not be

1 disputed, you will see the evidence, it's on the documents,  
2 that Mr. Dondero personally intervened to stop the Debtor from  
3 producing the financial statements of Get Good and Dugaboy,  
4 two entities that he controls, that the U.C.C. had been asking  
5 for for some time, that the Debtor had been asking of its  
6 employees for some time to produce. And it was only when we  
7 got, frankly, the discovery from Mr. Dondero when there's a  
8 text message that says, Not without a subpoena.

9 The documents are on the Debtor's system. We just don't  
10 know where they are because they're hidden someplace. But Mr.  
11 Dondero knows where they are. He can certainly force -- he  
12 can certainly get them produced. And one of the things we'll  
13 be asking for when we seek the contempt motion is the  
14 production of those very documents.

15 So, Your Honor, that's what the evidence is going to show.  
16 I don't think there's going to be any question that a  
17 preliminary injunction ought to issue. But I do want to spend  
18 just a few minutes rebutting some of the assertions made in  
19 the filing by Mr. Dondero last night.

20 Of course, they offer no evidence. There is no  
21 declaration. There is no document. There is merely argument.  
22 It's been that way throughout this case. For a year, Mr.  
23 Dondero has never stood before Your Honor to tell you why  
24 something was wrong being done to him, why -- he hasn't  
25 offered to be here at all, and he's here today, again, only

1 because he got a subpoena. That's the only reason we know  
2 he's here today.

3 So let's just spend a few minutes talking about the  
4 assertions made in the document last night. Mr. Dondero  
5 complains about the scope of the injunction, and I say to  
6 myself, in all seriousness, Are you kidding me? You didn't  
7 even read the TRO and you're going to be concerned about what  
8 the scope of the injunction is? You didn't even have enough  
9 respect for the Court to read the TRO and we're going to worry  
10 about the scope of some future injunction? Doesn't make any  
11 sense to me.

12 But let's talk about the specific arguments that they  
13 make.

14 Third parties. They're concerned that somehow third  
15 parties don't have notice of the injunction. Your Honor,  
16 third parties are not impacted by the injunction. The only  
17 third parties that are impacted by the injunction are those  
18 that are owned and/or controlled by Mr. Dondero. If he  
19 doesn't tell them, that's his breach of duty. He created the  
20 Byzantine empire of over 2,000 entities, and he wants the  
21 Debtor to have the burden of notifying all of them so that  
22 they can all come in here and make 2,000 arguments as to why  
23 they shouldn't be enjoined?

24 He owns and controls them. They are the only third  
25 parties who are impacted by this proposed preliminary

1 injunction, and he has the responsibility, he has the duty to  
2 inform them, because he owns and controls them.

3 We know of the K&L Gates Parties. We know Get Good and  
4 Dugaboy are in this courtroom. We know CLO Holdco. So many  
5 of these parties have been so -- they're on the phone now.  
6 They don't have notice? It is insulting, frankly, to suggest  
7 that the Debtor somehow has some obligation to figure out who  
8 Mr. Dondero owns and controls. He should know that. That's  
9 number one.

10 Number two, there is a statement in there about employees  
11 and how he should be able to speak with them about personal  
12 and routine matters. As to that, Your Honor, he has forfeited  
13 that opportunity. He cannot be trusted. There cannot be any  
14 communication because nobody can police it. And so we think a  
15 complete bar to any discussion with any employee, except as it  
16 relates to shared services -- because we do have a contractual  
17 obligation; that's what was in it -- ought to be barred.  
18 That's number one.

19 Number two, there's a reference in the objection to Mr.  
20 Dondero's personal assistant. I'd like to know who that is,  
21 Your Honor. I wasn't aware that he still was using a personal  
22 assistant at the Debtor. I want to know specifically who that  
23 is. I don't know that they -- you know, I just -- we need to  
24 cut that off. And he should not be communicating with any  
25 employee. The Debtor should not be paying for his personal

1 assistant.

2 It's offensive to think that he's still doing that,  
3 particularly after he was terminated or his resignation was  
4 requested back in October precisely because his interests were  
5 adverse to the Debtor.

6 Number three, he's concerned that the Debtor is somehow  
7 preventing him from speaking to former employees. We now  
8 know, Your Honor, that that's a, I'm sure, a very specific  
9 reference to Mr. Ellington and Mr. Leventon. Right? He wants  
10 a green light to be able to do that. And you know, I'll leave  
11 it to Your Honor as to whether that's appropriate. I'll leave  
12 it to their counsel as to whether, going forward, colluding  
13 together against the Debtor at this point in time is in  
14 anybody's best interest. But I will -- what I will demand in  
15 the preliminary injunction is a very explicit statement that  
16 Mr. Ellington and Mr. Leventon are not to share any  
17 confidential or privileged information that they received in  
18 their capacity as general counsel and assistant general  
19 counsel of the Debtor.

20 The pot plan. He's afraid somehow the order is going to  
21 prevent him from pursuing the pot plan. He's had over a year  
22 to pursue this pot plan, Your Honor. Frankly, I don't, you  
23 know, I don't know what to say. He has never made a proposal  
24 that has gotten any traction with the only people who matter.  
25 And it's not the Debtor. It's the creditors. It's the

1 Creditors' Committee.

2 If you want to put in an exception that he can call Matt  
3 Clemente, I don't mean to put this on Mr. Clemente, he can  
4 decide whether or not that's appropriate, but the creditors  
5 are the only ones who matter here. Your Honor, it's not the  
6 Debtor.

7 And I'll let Mr. Dondero's counsel explain to Your Honor  
8 why he thinks he still needs to pursue a pot plan, and Your  
9 Honor can decide. I trust Your Honor to decide what  
10 boundaries and what guardrails might be appropriate for him to  
11 continue to pursue his pot plan.

12 That's all I have, Your Honor. Not much.

13 THE COURT: All right.

14 MR. MORRIS: But I think there's going to be --  
15 there's going to be an awful lot of evidence. This is going  
16 to be a lengthy examination. I ask the Court for your  
17 patience.

18 THE COURT: I've got --

19 MR. MORRIS: But that's all I have.

20 THE COURT: I've got all day, if we need it.

21 MR. MORRIS: Okay.

22 THE COURT: I hope we don't, but I've got all day if  
23 we need it. All right.

24 MR. MORRIS: That's what I have, Your Honor.

25 THE COURT: All right. Mr. Dondero's counsel, your

1 opening statement?

2 MR. BONDS: Your Honor, I would reserve my opening  
3 statement to the end of the hearing.

4 I would also point out that anything that Mr. Morris just  
5 said was not evidence, and we think that the evidence will  
6 show completely differently than argued or articulated by Mr.  
7 Morris.

8 THE COURT: All right.

9 MR. BONDS: That's all.

10 THE COURT: Thank you, Mr. Bonds.

11 Mr. Morris, you may call your witness.

12 MR. MORRIS: The Debtor calls James Dondero.

13 THE COURT: All right. Mr. Dondero, this is Judge  
14 Jernigan. I would ask you to say, "Testing, one, two," so we  
15 pick up your video so I can swear you in.

16 All right. Mr. Dondero, if you're speaking up, we're not  
17 hearing you, so please make sure you're unmuted and have your  
18 video --

19 (Echoing.)

20 MR. DONDERO: Hello. One, two.

21 THE COURT: Okay. We got you.

22 MR. DONDERO: One, two three.

23 THE COURT: We got you now.

24 JAMES D. DONDERO, PLAINTIFF'S WITNESS, SWORN

25 THE COURT: All right. Thank you.

Dondero - Direct

19

1 Mr. Morris, go ahead.

2 MR. MORRIS: Thank you, Your Honor.

3 (Echoing.)

4 THE COURT: I'm going to ask everyone except Mr.  
5 Dondero and Mr. Morris to put your device on mute. We're  
6 getting a little distortion.

7 All right. Go ahead.

8 DIRECT EXAMINATION

9 BY MR. MORRIS:

10 Q Good morning, Mr. Dondero. Can you hear me?

11 A Yes.

12 (Echoing.)

13 THE COURT: Ooh. Okay. We're having a little echo  
14 when you speak, Mr. Dondero. Do you have -- well, first, you  
15 have headphones. That always helps.

16 (Echoing.)

17 THE COURT: Okay. That may help as well.

18 (Pause.)

19 THE COURT: Okay. Let's try again. If you could  
20 say, "Testing, one, two."

21 THE WITNESS: Is that better?

22 THE COURT: That is better, yes.

23 All right. Go ahead.

24 THE WITNESS: Okay. Great.

25 MR. MORRIS: Thank you.

Dondero - Direct

20

1 BY MR. MORRIS:

2 Q Can you hear me, Mr. Dondero?

3 A You're a bit faint. Give me one second. Okay. Got you.

4 Q Okay. Thank you. Who is in the room with you right now?

5 A Bonds, Lynn, and a tech.

6 A VOICE: Bryan Assink.

7 THE WITNESS: Oh, is Assink here? Oh, okay, I'm  
8 sorry. All right. I'm sorry. Bonds, Lynn, and Bryan Assink.

9 BY MR. MORRIS:

10 Q Okay. You're testifying today pursuant to a subpoena,  
11 correct?

12 A Yes.

13 Q Okay.

14 MR. MORRIS: And Your Honor, that subpoena can be  
15 found at Docket No. 44 in the adversary proceeding.

16 THE COURT: All right.

17 BY MR. MORRIS:

18 Q In the absence of a subpoena, in the absence of a  
19 subpoena, you didn't know if you would show up to testify at  
20 this hearing; is that right?

21 A I -- I do what my counsel directs me to do, and I didn't  
22 know at that time whether they would direct me to come or not.

23 Q Okay. And when I -- when I deposed you earlier this week,  
24 you agreed that you may or may not testify; is that right?

25 A It depends on what counsel instructs me to do, correct. I

Dondero - Direct

21

1 didn't know at the time.

2 Q Okay. And you didn't mention anything about counsel when  
3 I asked you the questions earlier this week, correct?

4 A That was the undertone in almost all my answers, that I  
5 relied on counsel.

6 MR. MORRIS: Your Honor, I move to strike. I'm  
7 asking very specific questions. And if I need to go to the  
8 deposition transcript, I'm happy to do that.

9 THE COURT: All --

10 MR. MORRIS: Just going forward, Your Honor, this is  
11 cross-examination. It's really yes or no at this point.  
12 That's what I would request, anyway.

13 THE COURT: All right. Mr. Dondero, do you  
14 understand --

15 (Echoing.)

16 THE COURT: Do you understand what Mr. Morris was  
17 raising there? We really need you to give specific answers --  
18 and usually they're going to be yes or no answers -- to Mr.  
19 Morris's questioning. Okay? So let's try again. Mr. Morris,  
20 go ahead.

21 THE WITNESS: Yeah.

22 BY MR. MORRIS:

23 Q Mr. Dondero, you're aware that Judge Jernigan granted the  
24 Debtor's request for a TRO against you on December 10th,  
25 correct?

Dondero - Direct

22

1 A Yes.

2 Q But you never reviewed the declaration that Mr. Seery  
3 filed in support of the Debtor's motion for a TRO, correct?

4 A I relied on counsel.

5 Q Sir, you never reviewed the declaration that Mr. Seery  
6 filed in support of the Debtor's motion for a TRO, correct?

7 A Correct.

8 Q You didn't even know the substance of what Mr. Seery  
9 alleged in his declaration at the time that I deposed you on  
10 Tuesday, correct?

11 A Correct.

12 Q And that's because you didn't even think about the fact  
13 that the Debtor was seeking a TRO against you; isn't that  
14 right?

15 A No.

16 Q That's not right?

17 A No.

18 Q All right.

19 MR. MORRIS: Your Honor, could I ask my assistant,  
20 Ms. Canty, to put up on the screen what had been designated as  
21 the Debtor's Exhibit Z in connection with the motion for  
22 contempt? Exhibit Z is the transcript from Tuesday's hearing.

23 THE COURT: All right.

24 MR. MORRIS: And I would like to -- I'd like to  
25 cross-examine Mr. Dondero on his testimony on Tuesday.

Dondero - Direct

23

1 THE COURT: All right. You may.

2 MR. MORRIS: Can we put up Page 15, please? And go  
3 to Lines 15 through 17.

4 BY MR. MORRIS:

5 Q Sir, you recall being deposed on Tuesday by my -- by me,  
6 correct?

7 A Yes.

8 Q Okay. Did you hear this question and did you hear this  
9 answer?

10 "Q Did you care that the Debtor was seeking a TRO  
11 against you?

12 "A I didn't think about it."

13 Q Is that -- is that your testimony from the other day?

14 A Yes.

15 Q You didn't dial in to the hearing when the Court  
16 considered the Debtor's motion for a TRO against you, did you?

17 A I -- I don't recall. I don't think so.

18 Q You never read the transcript in order to understand what  
19 took place in this courtroom when Judge Jernigan decided to  
20 enter a TRO against you; isn't that right?

21 A I relied on counsel, which has been my testimony all  
22 along.

23 MR. MORRIS: Can we go to Page 13 of the transcript,  
24 please? Beginning at Line 24.

25 BY MR. MORRIS:

Dondero - Direct

24

1 Q (reading)

2 "Q Did you read a transcript of the hearing?

3 "A No."

4 Q Did you testify on Tuesday that you did not read a  
5 transcript of the hearing?

6 A Yes.

7 Q In fact, as of at least last Tuesday, you hadn't even  
8 bothered to read the TRO that this Court entered against you.  
9 Isn't that right?

10 MR. BONDS: Your Honor, I'm going to object.

11 (Echoing.)

12 THE COURT: Okay. We're getting that echo from you  
13 now, Mr. Bonds. So maybe you need to turn your volume down a  
14 little. But what is the basis for your objection?

15 (Echoing.)

16 MR. BONDS: Leading and rhetorical.

17 MR. MORRIS: I think it's because they're in the same  
18 room.

19 THE COURT: Okay. Do you have -- I don't know what  
20 you're doing. I guess you're moving to a different room?

21 MR. BONDS: I am, Your Honor.

22 THE COURT: Okay.

23 (Echoing.)

24 THE COURT: Okay. I'm waiting for the objection  
25 basis.

Dondero - Direct

25

1 MR. BONDS: The basis of the objection, Your Honor,  
2 is that --

3 (Echoing.)

4 THE COURT: Okay. We're going to have to do  
5 something different here. We can't have this issue for the  
6 entire hearing. Do you need to get a tech person in there, or  
7 maybe call in on your phone? I don't know.

8 MR. BONDS: Your Honor, I'm going into the conference  
9 room.

10 (Pause.)

11 THE COURT: Okay. Are we going to try again here?

12 MR. BONDS: Yes. Is this working?

13 THE COURT: Yes.

14 MR. BONDS: Perfect. Your Honor, my objection is  
15 that Mr. Dondero has already testified that he relied on his  
16 lawyers. I don't know where Mr. Morris is going with this,  
17 but it's pretty clear that Mr. Dondero simply relies on his  
18 lawyers to tell him what happened. I don't know that that's  
19 that different than any other layperson.

20 MR. MORRIS: Your Honor, if this is --

21 THE COURT: Well, --

22 MR. MORRIS: If I may?

23 THE COURT: Yes.

24 MR. MORRIS: I believe it's terribly relevant to know  
25 how seriously Mr. Dondero takes this Court and this Court's

1 proceedings and this Court's orders. If the Court decides  
2 that it doesn't matter whether or not he read the transcript,  
3 you're the fact-finder and you'll make that decision. But I  
4 believe it's at least relevant.

5 THE COURT: Okay. I agree and I overrule the  
6 objection.

7 Go ahead.

8 BY MR. MORRIS:

9 Q Mr. Dondero, as of at least Tuesday, you never bothered to  
10 read the TRO that was entered against you, correct?

11 A I'm sorry. We're dealing with some tech stuff here for a  
12 second. Can you repeat the question?

13 Q Yes.

14 (Echoing.)

15 Q As of Tuesday, you had not bothered to read the TRO that  
16 was entered against you?

17 (Echoing.)

18 MR. MORRIS: Your Honor, can we take a break? I  
19 can't do this. I just --

20 THE COURT: Okay. I agree. Okay. Mr. Bonds, what  
21 do we need to do to fix these technical problems? Do I need  
22 to get my IT guy in here and help you? This is terrible.  
23 This connection is terrible. And I understand people have  
24 technical problems sometimes, but we've been doing these video  
25 hearings since March, so --

Dondero - Direct

27

1 MR. BONDS: Your Honor, I have simply gone to another  
2 conference room. The Debtor (garbled) I think that Mr.  
3 Dondero should be fine.

4 THE COURT: Okay. I don't know what you said except  
5 that you think Mr. Dondero should be fine. I --

6 MR. MORRIS: Is there anybody in that room with a  
7 cell phone on, Mr. Dondero?

8 THE WITNESS: No.

9 MR. BONDS: And I'm completely over in --

10 THE COURT: Okay.

11 MR. MORRIS: Can I try and proceed?

12 THE COURT: Try to proceed.

13 MR. MORRIS: Okay.

14 (Echoing.)

15 BY MR. MORRIS:

16 Q Mr. Dondero, as of Tuesday you only had a general view of  
17 what this Court restrained you from doing; is that correct?

18 (Echoing.)

19 MR. MORRIS: I'd still -- I -- there's too much  
20 noise, Your Honor. I can't do it.

21 THE COURT: Okay. We're going to take a five-minute  
22 break. Mr. Bonds, can you get a technical person there to  
23 work through these problems?

24 And Mike, let's get Bruce up here to --

25 THE CLERK: It's because they're in the same room.

Dondero - Direct

28

1 That's the problem.

2 THE COURT: They're -- they're --

3 THE CLERK: Judge Jernigan, this is Traci. Bruce is  
4 on his way up there.

5 THE COURT: Thank you.

6 Mike, explain it to me, because I don't understand.

7 You're saying if they have two devices on in the same room?

8 THE CLERK: The same -- that's the problem. They're  
9 so close. And they're trying to use the same device, give it  
10 back to you.

11 A VOICE: He has a phone on in the room.

12 MR. MORRIS: I asked that question.

13 THE COURT: Okay.

14 MR. MORRIS: Please instruct the witness to exclude  
15 everybody from the room, to turn off all electronic devices  
16 except the device that's being used for this (garbled). At  
17 least have --

18 THE COURT: All right. So, the consensus of more  
19 technical people than me is you've got two devices on in the  
20 same room and that's what's causing the distortion and echo.  
21 So I don't know if it's somebody's phone that needs to be  
22 turned off or if you have two iPads or laptops.

23 (Court confers with Clerk.)

24 (Pause.)

25 MR. BONDS: I think I'm unmuted. Can people hear me?

Dondero - Direct

29

1 THE WITNESS: Yes.

2 (Pause.)

3 THE COURT: Okay. Bruce, can you walk their office  
4 through? They have, I think, two devices in the same room.  
5 It's a horrible echo. So, Mr. Bonds or some --

6 MR. BONDS: Yes, Your Honor.

7 THE COURT: We have a lawyer and the lawyer's client  
8 who is testifying right now in the same room.

9 I.T. STAFF: Uh-huh.

10 THE COURT: And --

11 I.T. STAFF: Yeah. Yeah. Because -- is one a call-  
12 in user on a telephone?

13 THE COURT: I don't know. I don't --

14 I.T. STAFF: Yeah. Whatever's coming -- the audio is  
15 feeding back in. They need to separate if they're both on.  
16 Or just use one and the attorney can slide over and the client  
17 can --

18 THE COURT: Okay.

19 I.T. STAFF: -- go in his place. Just use one --

20 THE COURT: Our IT person is confirming what everyone  
21 else has been saying, that you really can only have one device  
22 in the same room. It's just unavoidable, the echoing.

23 I.T. STAFF: Unless everybody has --

24 THE COURT: Unless everyone has headphones on.

25 I.T. STAFF: Right.

Dondero - Direct

30

1 THE COURT: So we either need everyone to have  
2 headphones on, or one device in the room. And you all,  
3 awkward as it is, just have to share. Or I guess you could  
4 have two laptops, but one person has to --

5 I.T. STAFF: Has to have a headset.

6 THE COURT: Has to --

7 I.T. STAFF: Because the other one, the audio is  
8 going to be feeing into the microphone of the other one.

9 THE COURT: Okay. So, Mr. Bonds, I don't know if  
10 you've heard any of that, but --

11 THE CLERK: He needs to unmute himself.

12 THE COURT: You're on mute, Mr. Bonds.

13 MR. BONDS: I'm sorry, Your Honor. I'm going to sit  
14 next to Mr. Dondero and answer any questions that may come up.

15 THE COURT: Okay.

16 MR. BONDS: If any objections --

17 THE COURT: Okay. So we're going to have one device?

18 MR. BONDS: Yes.

19 THE COURT: Okay. Let's try again.

20 Okay. Go ahead, Mr. Morris.

21 BY MR. MORRIS:

22 Q Mr. Dondero, is Mr. Ellington listening to this hearing?

23 THE COURT: I didn't hear you, Mr. Morris. What?

24 BY MR. MORRIS:

25 Q Mr. Dondero, is Mr. Ellington listening to this hearing?

Dondero - Direct

31

1 A I have no idea.

2 Q Is Mr. Leventon listening to this hearing?

3 A I have no idea. I haven't spoken with him.

4 Q Okay. So let's try again. At least as of today, you  
5 never bothered to read the TRO that was entered against you,  
6 correct?

7 A Correct.

8 Q As of Tuesday, you only had a general understanding of  
9 what the Court restrained you from doing, correct?

10 (Echoing.)

11 A I had an adequate understanding.

12 Q You had a what?

13 A Adequate understanding.

14 Q Your understanding --

15 A VOICE: Your Honor?

16 BY MR. MORRIS:

17 Q -- was that you were prohibited from speaking to the  
18 Debtor's board without counsel and from speaking to the  
19 Debtor's employees; is that right?

20 A No.

21 Q Okay.

22 MR. MORRIS: Can we go to Page 13, Line 8, please?

23 BY MR. MORRIS:

24 Q Were you asked this question and did you give this answer?

25 "Q Tell me your understanding of what the temporary

Dondero - Direct

32

1           restraining order restrains you from doing.

2           "A To talk to Independent Board directly or talking  
3 directly with employees.

4           "Q Is there any other aspect of the temporary  
5 restraining order that you're aware of that would  
6 otherwise constrain or restrain your conduct?

7           "A Those are the points I (garbled)."

8 Q Did you give those answers to the questions that I asked?

9 A Yes.

10 Q And even with that general understanding, you went ahead  
11 and communicated directly (garbled) employees many, many, many  
12 times after the TRO was entered?

13 A Only with regard to shared services, pot plan, and  
14 Ellington, the settlement counsel.

15 Q Does the restraining order permit you to speak with  
16 Debtor's employees about the pot plan?

17           (Echoing.)

18           THE COURT: Mr. Morris, let me stop.

19           MR. MORRIS: Yeah. I appreciate that, Your Honor.

20           THE COURT: Even --

21           MR. MORRIS: It's not working.

22           THE COURT: Even your sound is not coming through  
23 clearly. And I think it's the echo coming out of their  
24 speakers, Mr. Dondero and Mr. Bonds' speakers. But before we  
25 conclude that, would you turn off your video and ask your

Dondero - Direct

33

1 question again and see if it's any better, just to confirm  
2 it's not a bandwidth issue on your end? I doubt it is, but --  
3 okay. So, try asking your question again, and I'm going to  
4 see if it's still distorted.

5 BY MR. MORRIS:

6 Q There's nothing in the TRO that permitted you to speak  
7 with Debtor employees about the pot plan, correct?

8 THE COURT: Okay. Mr. Morris, it's not at your end.  
9 It's -- it's their end. Okay. So you can turn your video  
10 back on.

11 Mr. Bonds?

12 MR. BONDS: Yes, ma'am.

13 THE COURT: You all are going to have to use earbuds,  
14 apparently. We're getting -- we're getting a feedback loop,  
15 okay? Whenever Mr. Morris talks or I talk, we're hearing  
16 ourselves echo through your speakers.

17 MR. BONDS: Can you check right now to see if it's  
18 true, if we're experiencing the same problem?

19 THE WITNESS: In other words, is this better? We  
20 unplugged the cord here.

21 THE COURT: Well, when you all speak, it's -- it's  
22 better now. But when --

23 MR. MORRIS: It is better.

24 THE COURT: But when Mr. Morris asks a question, it's  
25 echoing through your speakers. But I don't hear myself

Dondero - Direct

34

1 echoing through your speakers.

2 I.T. STAFF: Can Mr. Morris say something, please?

3 THE COURT: Mr. Morris, say something.

4 MR. MORRIS: They may have solved the problem. They  
5 may have solved the problem. How's that?

6 THE COURT: Okay. I think the problem is solved,  
7 whatever you did, so let's try once again.

8 Go ahead, Mr. Morris. Repeat your last question. I  
9 didn't hear it.

10 BY MR. MORRIS:

11 Q Mr. Dondero, the temporary restraining order doesn't  
12 permit you to speak with the Debtor's employees about a pot  
13 plan; isn't that right?

14 A There was a presentation on the pot plan given to the  
15 Independent Board after the restraining order was put in  
16 place. What are you implying, that that wasn't proper?

17 MR. MORRIS: Your Honor, I move to strike. It's a  
18 very simple question.

19 THE COURT: Okay. Sustained. If you could just  
20 answer the specific question, Mr. Dondero.

21 THE WITNESS: I don't know.

22 BY MR. MORRIS:

23 Q Fair enough. Sir, let's talk about some of the events  
24 that led up to the imposition of the TRO. I appreciate the  
25 fact that you hadn't read Mr. Seery's declaration or any of

Dondero - Direct

35

1 the evidence that was submitted in connection with the TRO, so  
2 let's spend some time talking about that now. CLO stands for  
3 Collateralized Loan Obligation, correct?

4 A Yes.

5 Q And the Debtor is party to certain contracts that give it  
6 the exclusive right and responsibility to manage certain CLOs,  
7 correct?

8 A Yes.

9 Q NexPoint Advisors, LP is an advisory firm. Do I have that  
10 right?

11 A Yes.

12 Q And we can refer to that, that firm, as NexPoint; is that  
13 fair?

14 A Yes.

15 Q You have a direct or indirect ownership interest in  
16 NexPoint, correct?

17 A Yes.

18 Q You're the president of NexPoint; isn't that right?

19 A Yes.

20 Q And as the president of NexPoint, it's fair to say that  
21 you control that entity, correct?

22 A To a certain extent.

23 Q Sir, as the president of NexPoint, it's fair to say that  
24 you control that entity, correct?

25 A To a certain extent.

Dondero - Direct

36

1 MR. MORRIS: Can we go to Page 18 of the transcript,  
2 please? Lines 19 and 21.

3 BY MR. MORRIS:

4 Q Were you asked this question and did you give this answer?

5 "Q As the president of NexPoint, it's fair to say  
6 that you control that entity?

7 "A Generally."

8 Q Is that the right answer that you gave the other day?

9 A I think it's similar to what I just said, yeah, yeah.

10 Q Sir, you're familiar with Highland Capital Management Fund  
11 Advisors, LP; is that right?

12 A Yes.

13 Q And we'll call that Fund Advisors; is that fair?

14 A Yes.

15 Q And we'll refer to Fund Advisors and NexPoint together as  
16 the Advisors; is that okay?

17 A Yes.

18 Q Fund Advisors is also an advisory firm, correct?

19 A Yes.

20 Q You have a direct or indirect ownership interest in Fund  
21 Advisors, correct?

22 A Yes.

23 Q You're the president of Fund Advisors, correct?

24 A Yes.

25 Q And you also have an ownership interest in the general

1 partner of Fund Advisors; isn't that right?

2 A I believe so.

3 Q It's fair to say that you control Fund Advisors, correct?

4 A Generally.

5 Q NexPoint and Fund Advisors manage certain investments  
6 funds; is that right?

7 A Yes.

8 Q Among the funds that they manage are High Point Income  
9 Fund; is that right?

10 A I don't think that's a name that we manage.

11 Q Let's put it this way. There are three funds that are  
12 represented by K&L Gates that are managed by the Advisors,  
13 correct?

14 A I don't know.

15 Q Okay. You're the portfolio manager of the investment  
16 funds advised by NexPoint and Fund Advisors, correct?

17 A Largely.

18 Q And NexPoint and Fund Advisors caused the investment funds  
19 that they manage to invest in CLOs that are managed by the  
20 Debtors, correct?

21 A Years ago, they bought the equity interests, if that -- if  
22 that's what you're asking me, in various CLOs.

23 Q The two Advisors that you own and control caused the  
24 investment funds to purchase interests in CLOs that are  
25 managed by the Debtor, correct?

Dondero - Direct

38

1 A Not recently. Not recently. Years ago. Yes.

2 Q And they still hold those interests today, correct?

3 A Yes.

4 Q And K&L Gates represents all of those entities, correct?

5 A Yes.

6 Q And we'll call those the K&L Gates Clients; is that fair?

7 A Yes.

8 Q Before the TRO was entered, the K&L Gates Clients sent two  
9 letters to the Debtor concerning the Debtor's management of  
10 certain CLOs, right?

11 A Yes.

12 Q Okay.

13 MR. MORRIS: Your Honor, I just want to take a moment  
14 now, because we're going to start to look at some documents.  
15 The Debtor would respectfully move into evidence Exhibits A  
16 through Y that are on their exhibit list.

17 THE COURT: All right.

18 MR. BONDS: Your Honor, we have no objection.

19 THE COURT: A through Y are admitted. And for the  
20 record, these appear at Docket No. 46 in this adversary.

21 (Plaintiff's Exhibits A through Y are received into  
22 evidence.)

23 MR. MORRIS: Okay. Can we please put up Exhibit B as  
24 in boy? (Pause.) Ms. Canty? If you need a moment, just let  
25 us know.

Dondero - Direct

39

1 MS. CANTY: Yeah. I'm pulling it up right now.

2 MR. MORRIS: Thank you. (Pause.) Can you scroll  
3 down just a bit?

4 BY MR. MORRIS:

5 Q All right. Can you see this letter was sent on October  
6 16th?

7 A Yes.

8 Q And we see the entities that are reflected on this letter.  
9 We've got Highland Capital Management, LP. That's the  
10 question that they're asking. And the questions and the  
11 statements are being asserted on behalf of NexPoint Advisors,  
12 LP. Do you see that?

13 A Yes.

14 Q And Highland Capital Management Fund Advisors, LP. Those  
15 are the two Advisors that you own and control, correct?

16 A Control to a large extent.

17 Q Okay.

18 MR. MORRIS: And can we put up Exhibit C, please?

19 BY MR. MORRIS:

20 Q This is a second letter sent by NexPoint on November 24th.  
21 Do you see that?

22 A Yes.

23 Q Okay. And you're familiar with the substance of these  
24 letters, correct?

25 A Yes.

Dondero - Direct

40

1 Q And you were familiar -- you were aware of these letters  
2 before they were sent. Is that correct?

3 A Yes.

4 Q And you generally discussed the substance of these letters  
5 with NexPoint; is that right?

6 A Generally, yes.

7 Q And you discussed the substance of the letters with the  
8 Advisors' internal counsel; is that right?

9 A Yes.

10 Q That's D.C. Sauter?

11 A Yes.

12 Q And you have been on some calls with K&L Gates about these  
13 letters, right?

14 A I believe so.

15 Q And you knew these letters were being sent, correct?

16 A Yeah, they're -- they're reported.

17 Q You knew these letters for being sent; isn't that right,  
18 sir?

19 A Yes.

20 Q And you didn't object to the sending of these letters,  
21 correct?

22 A No.

23 Q In fact, you supported the sending of these letters. Is  
24 that right?

25 A Yes.

Dondero - Direct

41

1 Q And you have never directed NexPoint to withdraw these  
2 letters, correct?

3 A No.

4 Q Around Thanksgiving, you learned that Mr. Seery had given  
5 a direction to sell certain securities owned by the CLOs  
6 managed by the Debtors, correct?

7 A Yes.

8 Q And when you learned that, you personally intervened to  
9 stop the trades, correct?

10 A Yes. I believe they were inappropriate.

11 MR. MORRIS: I move to strike the latter part of the  
12 answer, Your Honor.

13 THE COURT: It's stricken.

14 MR. MORRIS: Can we put up Exhibit D, please?

15 BY MR. MORRIS:

16 Q We looked at this email string the other day. Do you  
17 recall that?

18 A Yes.

19 MR. MORRIS: Can we start at the bottom, please?

20 BY MR. MORRIS:

21 Q There's an email from Hunter Covitz. Do you see that?

22 A Yes.

23 Q Now, this is November 24th. It's before the TRO. Is that  
24 fair?

25 A Yes.

Dondero - Direct

42

1 Q Mr. Covitz is an employee of the Debtor, right?

2 A I believe so.

3 Q And Mr. Covitz helps manage the CLOs on behalf of the  
4 Debtor. Is that your understanding?

5 A Yes.

6 Q And Mr. Covitz in this email is giving directions to Matt  
7 Pearson and Joe Sowin to sell certain securities held by the  
8 CLOs. Is that correct?

9 A No. He's giving Jim Seery's direction.

10 MR. BONDS: And Your Honor, I'm going to object.  
11 This is all before the TRO was ever entered. It doesn't have  
12 anything to do with today's hearing.

13 THE COURT: Overruled.

14 MR. MORRIS: May I respond, Your Honor?

15 THE COURT: I --

16 MR. MORRIS: Okay. Thank you.

17 THE COURT: I think it's relevant. Go ahead.

18 MR. MORRIS: Thank you. Okay.

19 BY MR. MORRIS:

20 Q Mr. Seery is the CEO of the Debtor; is that right?

21 A Yes.

22 Q And the Debtor is the contractual party with the CLOs  
23 charged with the exclusive responsibility of managing the  
24 CLOs, correct?

25 A I don't believe so. The Debtor is in default of the

Dondero - Direct

43

1 agreements.

2 MR. MORRIS: I move to strike, Your Honor.

3 THE COURT: Sustained.

4 BY MR. MORRIS:

5 Q Sir, the Debtor has the exclusive contractual right and  
6 obligation to manage the CLOs, correct?

7 A I don't agree with that.

8 Q Okay.

9 MR. MORRIS: Can we scroll up to the -- just --

10 BY MR. MORRIS:

11 Q Do you see that Mr. Pearson acknowledges receipt of Mr.  
12 Covitz's email?

13 A Yes.

14 Q And you received a copy of Mr. Covitz's email, did you --  
15 did you not?

16 A Yes.

17 MR. MORRIS: Can you scroll up a little bit, please?

18 BY MR. MORRIS:

19 Q And can you just read for Judge Jernigan your response  
20 that you provided to Mr. Pearson, Mr. Covitz, and Mr. Sowin on  
21 November 24th?

22 A (reading) No, do not.

23 Q You instructed the recipients of Mr. Covitz's email not to  
24 sell the SKY securities as had been specifically instructed by  
25 Mr. Seery, correct?

Dondero - Direct

44

1 A Yes.

2 Q And you understood when you gave that instruction that the  
3 people on the email were trying to execute trades that Mr.  
4 Seery had authorized, correct?

5 A No. I -- no, that isn't how I would describe it.

6 MR. MORRIS: A second, Your Honor?

7 THE COURT: Okay.

8 (Pause.)

9 BY MR. MORRIS:

10 Q Sir, when you gave the instruction reflected in this  
11 email, you knew that you were stopping trades that were  
12 authorized and directed by Mr. Seery, correct?

13 A I don't think -- I -- I wasn't -- I wasn't sure at the  
14 moment I did that. I didn't find out until later that it was  
15 Seery who directed it.

16 MR. MORRIS: Can we please go back to the deposition  
17 transcript, Debtor's Exhibit Z, at Page 42? Line 12.

18 BY MR. MORRIS:

19 Q Were you asked this question and did you give this answer?

20 "Q At the time that you gave the instruction, "No, do  
21 not," you knew that you were stopping trades that had  
22 been authorized and directed by Mr. Seery, correct?

23 "A Yes."

24 Q Did you give that answer to my question on Tuesday?

25 A I'd like to clarify it, but yes, I did give that answer.

Dondero - Direct

45

1 Q Okay. You didn't speak with Mr. Seery before sending your  
2 instructions interfering with his trade, the trades that he  
3 had authorized, correct?

4 A No, I did not.

5 Q And you took no steps to seek the Debtor's consent before  
6 instructing the recipients of your email to stop executing the  
7 SKY transactions that had been authorized by Mr. Seery,  
8 correct?

9 A I'm sorry. Can you repeat the question?

10 Q You took no steps to seek the Debtor's consent before  
11 stepping in to stop the trades that Mr. Seery had authorized,  
12 correct?

13 A I took other actions instead.

14 Q Okay. But you didn't seek the Debtor's consent? That's  
15 not one of the actions you took, right?

16 A No, I educated the traders as to why it was inappropriate.

17 MR. MORRIS: I move to strike, Your Honor.

18 THE COURT: Sustained.

19 BY MR. MORRIS:

20 Q Sir, did you seek the Debtor's consent before stepping in  
21 to stop the trades that Mr. Seery had authorized?

22 A No, I did not seek consent.

23 Q In response to your instruction, Mr. Pearson canceled all  
24 of the trades that Mr. Seery had authorized, correct?

25 A Yes.

Dondero - Direct

46

1 MR. MORRIS: Can we go back to the exhibit, please?

2 And if we could just scroll -- stop right there.

3 BY MR. MORRIS:

4 Q That's -- that's Mr. Pearson's response to your email,  
5 confirming that he had canceled both the SKY and the AVAYA  
6 trades that had not yet been executed, correct?

7 A Yes.

8 MR. MORRIS: Can we scroll to the response to that?

9 BY MR. MORRIS:

10 Q Is this your response?

11 A Yes.

12 Q Can you read that aloud, please?

13 A (reading) HFAM and DAF have instructed Highland in  
14 writing not to sell any CLO underlying assets. There is  
15 potential liability. Don't do it again, please.

16 Q The writings that you're referring to are the two letters  
17 from NexPoint, Exhibits B and C that we just looked at,  
18 correct?

19 A Yeah. There might have been a third letter. I don't  
20 know. But, yes, generally, those letters.

21 Q Okay. And at this juncture, the reference to potential  
22 liability was a statement intended for Mr. Pearson. Is that  
23 correct?

24 A Um, I -- no. Pearson wouldn't have had any personal  
25 liability. It was -- it was meant for the -- there was

Dondero - Direct

47

1 potential liability to the Debtor or to the compliance  
2 officers at the Debtor.

3 MR. MORRIS: Can we go to Page 45 of the deposition  
4 transcript, please? Line -- beginning at Line 11, through 18.

5 BY MR. MORRIS:

6 Q Did I ask these questions and did you give these answers?

7 "Q Do you see the reference there in the latter  
8 portion of your email, 'There is potential liability.  
9 Don't do it again'?

10 "A Yes.

11 "Q Who was the intended recipient of that message?

12 "A At this juncture, it's Matt Pearson, I believe."

13 Q Did you give those answers to my questions on Tuesday?

14 A Yeah. That's not inconsistent.

15 MR. MORRIS: Let's go back to the email, please.

16 BY MR. MORRIS:

17 Q Mr. Sowin responded to your email; is that right?

18 MR. MORRIS: Can we scroll up?

19 BY MR. MORRIS:

20 Q Okay. Who's Mr. Sowin?

21 A He's the head trader.

22 Q Who's he employed by?

23 A I believe he's employed by HFAM but not the Debtor.

24 Q Okay. So he's -- he's somebody who's employed by one of  
25 the Advisors; is that right?

Dondero - Direct

48

1 A I believe so.

2 Q And Mr. Sowin responded to your email and he indicated  
3 that he would follow your instructions. Is that right?

4 A Yeah. He understands that it's inappropriate. That's  
5 what he's reflecting. Yes.

6 MR. MORRIS: I move to strike, Your Honor.

7 THE COURT: Sustained.

8 BY MR. MORRIS:

9 Q Sir, Mr. Sowin responded and indicated that he would  
10 follow your instructions, correct?

11 A (no audible response)

12 Q Did you answer? I'm sorry.

13 A No, I didn't answer. It's -- I don't know if you could  
14 expressly say that from that email. Maybe we should read the  
15 email.

16 MR. MORRIS: Let's just move on, Your Honor.

17 THE COURT: Okay.

18 BY MR. MORRIS:

19 Q A few days later, you learned -- you learned that Mr.  
20 Seery was trying a workaround to effectuate the trades anyway,  
21 correct?

22 A I believe so.

23 Q Uh-huh. And when you learned that, you wrote to Thomas  
24 Surgent; is that right?

25 A I -- I believe so.

Dondero - Direct

49

1 Q I don't -- I don't mean to -- this is not a test here.

2 MR. MORRIS: Can we just scroll up to the next email,  
3 please? Okay. Stop right there.

4 BY MR. MORRIS:

5 Q When you -- when you learned that Mr. Seery was trying a  
6 workarround, you wrote to Mr. Surgent when you learned that,  
7 right?

8 A Yes.

9 Q And Mr. Surgent is an employee of the Debtor; is that  
10 correct?

11 A I believe he's still the chief compliance officer of the  
12 Debtor.

13 Q Okay. Now, as a factual matter, you never asked Mr. Seery  
14 why he wanted to make these trades; isn't that right?

15 A I -- I did not.

16 Q Okay. And before the TRO was entered, there was nothing  
17 that prevented you from picking up the phone and asking Mr.  
18 Seery why he wanted to make these trades, correct?

19 A That's not true.

20 MR. MORRIS: One second, please, Your Honor.

21 THE COURT: Okay.

22 (Pause.)

23 MR. MORRIS: Can we go to Page 60 of the transcript?  
24 Mr. Bonds says -- beginning at Line 14. There is an objection  
25 there, Your Honor, and I would ask that the Court rule on the

Dondero - Direct

50

1 objection before I read from the transcript.

2 THE COURT: Okay.

3 MR. MORRIS: There you go.

4 THE COURT: (sotto voce) (reading) Is there  
5 anything that you're aware of that prevented you from picking  
6 up the phone and asking Mr. Seery for his business  
7 justification for these trades prior to December 10.  
8 Objection, form.

9 I overrule the objection to the form of that question.

10 MR. MORRIS: Okay.

11 BY MR. MORRIS:

12 Q Mr. Dondero, were you asked this question and did you give  
13 this answer?

14 "Q Is there anything that you're aware of that  
15 prevented you from picking up the phone and asking Mr.  
16 Seery for his business justification for these trades  
17 prior to December 10, 2010?

18 "A No. I expressed my disapproval via email."

19 Q Is that right?

20 A I'd like to adjust that answer to the answer I just gave.

21 Q Okay.

22 MR. MORRIS: And I move to strike.

23 BY MR. MORRIS:

24 Q I'm just asking you if that's the answer you gave on  
25 Tuesday.

Dondero - Direct

51

1 THE COURT: Sustained.

2 THE WITNESS: Yes.

3 BY MR. MORRIS:

4 Q Thank you. Now, you wrote to Mr. Surgent because you  
5 wanted to remind him of his personal liability for regulatory  
6 breaches and for doing things that aren't in the best interest  
7 of investors, correct?

8 A Yes.

9 Q And you actually thought about this and you -- because you  
10 didn't believe that Mr. Surgent had extra insurance and  
11 indemnities like Mr. Seery, right?

12 A No.

13 Q Didn't you testify to that the other day?

14 A I don't remember, but that isn't the only reason.

15 Q I didn't ask you if it was the only reason. Listen  
16 carefully to my question. Did you send this email because you  
17 -- because you wanted to remind him of his personal liability  
18 for regulatory breaches and for doing things that aren't in  
19 the -- I apologize. Withdrawn.

20 You did not believe at the time that you sent this email  
21 that he, Mr. Surgent, had insurance and indemnities like Mr.  
22 Seery, correct?

23 A Yes.

24 Q Okay.

25 MR. MORRIS: Can we go back to the email, please?

1 BY MR. MORRIS:

2 Q Can you just read the entirety of your email to Mr.  
3 Surgent out loud?

4 A (reading) I understand Seery is working on a workaround  
5 to trade these securities anyway, trades that contradict  
6 investor desires and have no business purpose or investment  
7 rationale. You might want to remind him and yourself that the  
8 chief compliance officer has personal liability.

9 Q Okay. That's -- that's the message you wanted to convey  
10 to Mr. Surgent, right?

11 A Yes.

12 Q And, again, you never bothered to ask Mr. Seery what his  
13 businessperson -- purpose or investment rationale was,  
14 correct?

15 A I -- I didn't believe I could talk to him directly.

16 Q This is before the --

17 A That's why I never picked up the phone.

18 Q Okay. You intended to convey the message to Mr. Surgent  
19 that, by following Mr. Seery's orders to execute the trades,  
20 that Mr. Surgent faced personal liability, correct?

21 A Yes, he does.

22 Q And that's the message you wanted to send to him, right?

23 A It's a true and accurate message, yes.

24 Q Okay. Just a few days earlier, you also threatened Mr.  
25 Seery, right?

Dondero - Direct

53

1 A I wouldn't use the word "threatened."

2 Q Okay. Let's let -- let's let it speak for itself.

3 MR. MORRIS: Can we go to Exhibit E, please? Keep  
4 scrolling down just a bit.

5 BY MR. MORRIS:

6 Q This is an email that you sent to Mr. Seery on November  
7 24th. And as always, Mr. Dondero -- this is the third time  
8 we're meeting -- if there's something in the document that you  
9 need to see, please just let me know, because I don't -- I  
10 don't mean to test your memory if the document can help  
11 refresh your recollection.

12 MR. MORRIS: Can we just scroll up a little bit  
13 further to the top to see the date?

14 BY MR. MORRIS:

15 Q Okay. So, Jim, there, JD, who is that?

16 A That's me.

17 Q Okay. And can you tell by the substance of the email, of  
18 the text messages, this is communications between you and Mr.  
19 Seery, right?

20 A Yes.

21 Q Okay. And you see that it's dated November 24th there?

22 A Yes. Right after we were discussing the pipeline. Or  
23 right when we were working on the pipeline.

24 Q Okay.

25 MR. MORRIS: Can you scroll down a little bit,

1 please?

2 BY MR. MORRIS:

3 Q At 5:26 p.m., you sent Mr. Seery a text, correct?

4 A Yes.

5 Q Can you read that, please?

6 A (reading) Be careful what you do. Last warning.

7 Q Okay. This was a warning telling Mr. Seery to stop  
8 selling assets out of the CLOs or the beneficial owners would  
9 take more significant action against him, correct?

10 A It was a general statement that what he was doing was  
11 regulatorily inappropriate and ethically inappropriate and he  
12 was in breach of the contracts he was operating.

13 Q Neither you nor any entity owned or controlled by you are  
14 parties to the contracts you just referred to; isn't that  
15 correct?

16 A I believe they're indirectly parties to those contracts,  
17 especially when they're in default.

18 Q Neither you nor any entity owned or controlled by you is a  
19 signatory to any CLO management contract pursuant to which the  
20 Debtor is a party, correct?

21 A I -- I don't know and I don't want to make legal  
22 conclusions on that.

23 Q Okay. At the deposition the other day, some of the things  
24 that you suggested the beneficial owners of the CLO interests  
25 might do against Mr. Seery and the Debtor are class action

Dondero - Direct

55

1 lawsuits. Is that right?

2 A I -- I did not suggest the entities I control would do  
3 that. If anybody on this call were to call a class action  
4 lawsuit -- a class action law firm and tell them what's been  
5 going on with the CLOs, I think a class action law firm would  
6 file it on their own regard, not on the behalf of my entities.

7 MR. MORRIS: I move to strike, Your Honor.

8 THE COURT: Sustained.

9 BY MR. MORRIS:

10 Q Let's talk about that cell phone. Okay? Until at least  
11 December 10th, the day the TRO was entered, you had a cell  
12 phone that was bought and paid by the Debtor, right?

13 A Yes.

14 Q But sometime after December 10th, your phone was disposed  
15 of or thrown in the garbage; is that right?

16 A Yes.

17 Q And you don't know when after December 10th the cell phone  
18 that was the Debtor's property was disposed of, right?

19 A I don't believe at that point it was the Debtor's  
20 property. I think I paid it off in full and the Debtor had  
21 announced that they were canceling everybody's cell phones so  
22 it was appropriate for me to get another one.

23 MR. MORRIS: I move to strike, Your Honor.

24 THE COURT: Sustained.

25 MR. BONDS: Your Honor, at some point, I mean, Mr.

Dondero - Direct

56

1 Morris just ought to go on and testify.

2 MR. MORRIS: No, this is Mr. Dondero's testimony,  
3 Your Honor. He gave it the other day. I'm just asking him to  
4 confirm it, basically.

5 THE COURT: Okay. I overrule the objection, if any  
6 there was, on the part of Mr. Bonds.

7 BY MR. MORRIS:

8 Q Sometime after December 10th, the cell phone that prior to  
9 that time had been owned and paid for by the Debtor was thrown  
10 in the garbage or otherwise disposed of, correct?

11 A Yes.

12 Q And you don't know when after December 10th that was --  
13 the phone was disposed of, correct?

14 A It was on or about that date, I'm sure.

15 Q Well, we know it was after December 10th, right?

16 A Okay. Or about that date.

17 Q You testified the other day that you just don't know who  
18 made the decision to throw your phone away, right?

19 A I could find out, but I don't know. I would have to talk  
20 to employees.

21 Q Did you make any request of the Debtor since your  
22 deposition to try to find out the answer as to who made the  
23 decision to throw your phone away?

24 A No.

25 Q How did you learn that your phone was thrown away?

Dondero - Direct

57

1 A As I testified, it's standard operating procedures every  
2 time a senior executive gets a new phone.

3 Q Hmm. You don't know exactly who threw the phone away; is  
4 that right?

5 A No, but I can find out.

6 Q Okay. I'm just asking -- I'm not asking you to find out.  
7 I'm just asking you if you know. Do you know who threw your  
8 phone away?

9 A No.

10 Q Do you know who made the decision to throw your phone  
11 away?

12 A It -- there wasn't a decision. It was standard operating  
13 procedure.

14 MR. MORRIS: I move to strike.

15 THE COURT: Sustained.

16 BY MR. MORRIS:

17 Q You and Mr. Ellington disposed of your phones at the same  
18 time, correct?

19 A I don't have specific awareness regarding what Mr.  
20 Ellington did with his phone.

21 Q It never occurred to you to get the Debtor's consent  
22 before throwing the phone that they had purchased away, right?

23 A I'm not permitted to talk to the Debtor.

24 Q Sir, it never occurred to you to get the Debtor's consent  
25 before throwing the phone away, correct?

1 A I'm going to stick with the answer I just gave.

2 MR. MORRIS: Can we go to Page 75 of the transcript?  
3 Lines 12 through 15. There is an objection there, Your Honor.  
4 I would respectfully request that the Court rule on the  
5 objection before I read the testimony.

6 THE COURT: Okay. Starting at Line 12?

7 MR. MORRIS: 12.

8 THE COURT: (sotto voce) (reading) Did it ever  
9 occur to you to get the Debtor's consent before doing this?  
10 Objection, form.

11 That objection is overruled.

12 BY MR. MORRIS:

13 Q All right. Mr. Dondero, did you give this answer to my  
14 question on Tuesday?

15 "Q Did it ever occur to you to get the Debtor's  
16 consent before doing this?

17 "A No."

18 A Yes, I gave that testimony.

19 Q Okay. And you also had the phone number changed from the  
20 Debtor's account to your own personal account; is that right?

21 A The phone number changed? The phone number stayed the  
22 same.

23 Q But you had the number changed from the Debtor's account  
24 to your own personal account, correct?

25 A The Debtor said they wouldn't pay for it anymore. Who

Dondero - Direct

59

1 else could I change it to?

2 MR. MORRIS: Your Honor, I move to strike. It's a  
3 very simple question.

4 THE COURT: Sustained.

5 BY MR. MORRIS:

6 Q I'll ask it one more time, Mr. Dondero. You had the phone  
7 number changed from the Debtor's account to your personal  
8 account, correct?

9 A I didn't change the number. I had the billing changed to  
10 my personal account versus the company account.

11 Q And you never asked the Debtor for permission to do that,  
12 correct?

13 A No.

14 Q And you never told Debtor you were doing that, correct?

15 A No.

16 Q And nobody ever told Mr. Seery or anybody at my firm that  
17 the phone was being thrown in the garbage, correct?

18 A Well, --

19 MR. BONDS: To the extent he knows.

20 THE WITNESS: Yeah. I have no idea. But I didn't.

21 BY MR. MORRIS:

22 Q You didn't believe it was necessary to give the Debtor  
23 notice that you were taking the phone number for your own  
24 personal account and throwing the phone in the garbage,  
25 correct?

Dondero - Direct

60

1 A Correct.

2 Q The phone --

3 MR. BONDS: Your Honor, I'm going to object. He --  
4 Mr. Dondero did not testify he personally threw the phone in  
5 the garbage.

6 MR. MORRIS: Withdrawn.

7 THE COURT: Okay.

8 BY MR. MORRIS:

9 Q Mr. Dondero, the phone was in Highland's offices on  
10 December 10th, the date the TRO was in effect, correct?

11 A I -- I don't -- I -- I -- I don't know. You know, I don't  
12 know. It's -- I remember going over to -- well, anyway, I --  
13 I don't know. We'll leave it at that.

14 MR. MORRIS: Can we go to Exhibit G, please?

15 BY MR. MORRIS:

16 Q Who's Jason Rothstein, while we wait?

17 A Jason, Jason is our -- is the Highland head of technology.

18 Q Okay. And did you text with him from time to time? On or  
19 about December 10th?

20 A Yes.

21 Q Okay.

22 MR. MORRIS: Can we just scroll up a little bit?

23 BY MR. MORRIS:

24 Q Is that Mr. Rothstein there?

25 A Yes. Yeah.

Dondero - Direct

61

1 Q Okay. And do you see that there's a text message that you  
2 sent to him on December 10th, right at the top? Can you read  
3 -- can you read the text message Mr. Rothstein --

4 A He sent that to me. At the top.

5 Q I apologize. Thank you for the correction. Can you read  
6 what Mr. Rothstein told you on December 10th?

7 A That my old phone is in the top drawer of Tara's desk.

8 Q And who's Tara?

9 A My assistant.

10 Q Is she still your assistant today?

11 A Yes.

12 Q And has she been serving as your assistant since the TRO  
13 was entered into on December 10th?

14 A Yes.

15 Q Okay. Is it fair to say that you were informed on  
16 December 10th that the phone was not thrown in the garbage,  
17 had not been disposed of, but was instead sitting in Tara's  
18 desk?

19 A As of that moment, yes.

20 Q Okay. And it's also fair to say that, as of December  
21 10th, Mr. Rothstein didn't take it upon himself to throw your  
22 old phone in the garbage, right?

23 A Not as of that moment. But like I said, I can find out  
24 how it was disposed of.

25 Q If you were curious to do that, would you have done that

1 before today?

2 A I haven't been curious.

3 Q Thank you very much. Someone you can't identify made the  
4 decision after December 10th to throw the phone in the garbage  
5 without asking the Debtor for permission or seeking the  
6 Debtor's consent, correct?

7 MR. BONDS: I'm going to object, Your Honor. To the  
8 extent that the witness knows, he can answer.

9 THE COURT: I -- I didn't hear --

10 THE WITNESS: I don't know.

11 THE COURT: I didn't hear what your objection was,  
12 Mr. Bonds. Repeat.

13 MR. BONDS: Your Honor, my objection was along the  
14 lines of to the extent that the witness knows, he could  
15 testify, but if he doesn't know, he doesn't need to speculate.

16 THE COURT: All right. Well, I don't hear an  
17 objection there, but go ahead, Mr. Dondero, if you have  
18 knowledge and can answer the question.

19 THE WITNESS: I don't know.

20 BY MR. MORRIS:

21 Q Do you recall that the Debtor subsequently gave notice to  
22 you to vacate its offices and to return its cell phone?

23 A I don't know.

24 Q Did you ever --

25 A I know I -- I know I was told to vacate the offices. I

Dondero - Direct

63

1 didn't see the specific --

2 Q Uh-huh. Your lawyer -- your lawyers never told that  
3 Debtor that the cell phone had been disposed of or thrown in  
4 the garbage, consistent with company practice, right?

5 A I don't know.

6 MR. MORRIS: Can we put up Exhibit K, please?

7 BY MR. MORRIS:

8 Q This is the letter that my firm sent to your lawyer on  
9 December 23rd. Do you see that?

10 A Yeah, I see it.

11 Q Okay.

12 MR. MORRIS: Can we scroll down a little bit? Keep  
13 going. Okay. Stop right there.

14 BY MR. MORRIS:

15 Q Do you see that it says that, as a result of the conduct  
16 described above, that the Debtor "has concluded that Mr.  
17 Dondero's presence at the HCMLP office suite and his access to  
18 all telephonic and information services provided by HCMLP are  
19 too disruptive"?

20 A Yeah, I see it.

21 Q And this is the letter that gave you notice that you had  
22 to vacate the premises by December 30th, correct?

23 A I believe so.

24 MR. MORRIS: Can we scroll down a little bit?

25 BY MR. MORRIS:

Dondero - Direct

64

1 Q You see at the bottom there's a reference to a defined  
2 term of "cell phones"?

3 A Yes.

4 Q And it says that the Debtor "will also terminate Mr.  
5 Dondero's cell phone plan and those cell phone plans  
6 associated with parties providing personal services to Mr.  
7 Dondero." Do you see that?

8 A Yes. Yeah.

9 Q Have I read that accurately?

10 A Yes.

11 Q And then my colleagues went on to write, "HCMLP demands  
12 that Mr. Dondero immediately turn over the cell phones to  
13 HCMLP by delivering them to you, Mr. Lynn." Do you see that?

14 A Yes.

15 Q Have I read that accurately?

16 A Yes.

17 Q The last sentence on the page begins, "The cell phones  
18 and."

19 MR. MORRIS: And let's scroll down further.

20 BY MR. MORRIS:

21 Q "The cell phones and the accounts are property of HCMLP.  
22 HCMLP further demands that Mr. Dondero refrain from deleting  
23 or wiping any information or messages on the cell phone.  
24 HCMLP, as the owner of the account and cell phones, intends to  
25 recover all information related to the cell phones and

Dondero - Direct

65

1 accounts, and reserves the right to use the business-related  
2 information." Have I read that accurately?

3 A Yes.

4 Q Okay. We were a couple of weeks too late, huh?

5 A It sounds like it.

6 Q Yeah. Because the phones were already in the garbage,  
7 right?

8 A Yes.

9 Q Uh-huh. But that's not what Mr. Lynn told the Debtor on  
10 your behalf, right?

11 A I don't know.

12 Q Mr. Lynn -- all right. Let's -- let's see what Mr. Lynn  
13 said.

14 MR. MORRIS: Can we go to Exhibit U, please?

15 BY MR. MORRIS:

16 Q It took Mr. Lynn six days to write a one-paragraph letter  
17 in response, right? December 29th, he responded?

18 MR. MORRIS: Can we scroll down a bit?

19 BY MR. MORRIS:

20 Q Let me read beginning with the second sentence of the  
21 first substantive paragraph. "We are at present not sure of  
22 the location of the cell phone issued to Mr. Dondero by the  
23 Debtor, but we are not prepared to turn it over without  
24 ensuring the privacy of the attorney-client communications."  
25 And then he goes on.

Dondero - Direct

66

1 Have I read that correctly?

2 A Yes.

3 Q Okay. So Mr. Lynn didn't say anything about the phone  
4 being thrown in the garbage, right?

5 A No.

6 Q He didn't say that it was disposed of, did he?

7 A No.

8 Q He didn't refer to any company practice or policy, right?

9 A No.

10 Q Mr. Lynn's not a liar, is he?

11 A No, he's not.

12 Q He's a decent and honest professional. Wouldn't you agree  
13 with that?

14 A Yes.

15 Q And is it fair to say that he conveyed only the  
16 information that he had at the time?

17 A I don't know.

18 Q Do you have any reason to believe that Mr. Lynn would  
19 withhold from the Debtor the information that the cell phone  
20 had been thrown in the garbage, consistent with company  
21 practice?

22 A No, I don't believe he would withhold whatever he knew.

23 Q All right. Let's talk about -- let's talk about other  
24 matters. You do know, sir, do you not, that the Debtor is  
25 subject to the Bankruptcy Court's jurisdiction?

Dondero - Direct

67

1 A Yes.

2 Q Okay. And we just saw in the December 23rd letter that  
3 the Debtor demanded that you vacate their offices a week  
4 later, right?

5 A Yes.

6 Q And you knew that at or around the time the letter was  
7 sent on December 23rd, correct?

8 A I -- I don't remember when I knew.

9 Q Well, in fact, in fact, you or through counsel asked for  
10 an accommodation and asked for an extension of time to  
11 December 31st; isn't that right?

12 A I had to pack up 30 years of stuff in three days. I -- I  
13 know we asked for some forbearance. I don't think we got any.  
14 I don't remember the details. I don't understand why it's  
15 important.

16 Q Okay. It was actually -- withdrawn. The Debtor actually  
17 gave you seven days' notice, right? They sent the letter on  
18 December 23rd and asked you to vacate on December 30th,  
19 correct?

20 A I don't -- I don't remember. But, again, I think the  
21 initial response was it was inconsistent with shared services  
22 agreement. No Highland employees are coming into the office  
23 anyway. So kicking me out of my office was -- seemed  
24 vindictive and overreaching. And we tried to get some, you  
25 know, forbearance.

Dondero - Direct

68

1 Q Okay.

2 MR. MORRIS: I move to strike, Your Honor.

3 THE COURT: Sustained.

4 BY MR. MORRIS:

5 Q Mr. Dondero, you were given seven days' notice before --  
6 before you were going to be barred from the Debtor's office,  
7 correct?

8 A I don't know.

9 Q Okay.

10 MR. MORRIS: Can we go back to Exhibit K, please?

11 Oh, actually, it's okay.

12 BY MR. MORRIS:

13 Q We just read, actually, the piece from the Debtor's letter  
14 of December 23rd barring you from the Debtor's office. Do you  
15 remember that? And we can go back and look at it if you want.

16 A Yes.

17 Q Was there anything ambiguous that you recall about the  
18 Debtor's demand that you not enter their offices after  
19 December 30th?

20 A Ambiguous? I can tell you what my understanding was or I  
21 can tell you what the letter says. What would you like to  
22 know?

23 Q I'd just like to know if, as you sit here right now, you  
24 believe there was anything ambiguous about the Debtor's demand  
25 that you vacate the offices as of December 30th?

Dondero - Direct

69

1 A I mean, I did vacate the offices as of December 30th.

2 Q Correct. And you knew that -- and you were complying with  
3 the Debtor's demand you do that, right?

4 A Well, with the Court's demand, I guess.

5 Q Okay. And it's your understanding that you would not be  
6 permitted in the Debtor's offices after that time, correct?

7 A Um, (pause), uh, I don't know how to answer that question.  
8 I knew I wouldn't be residing in the offices anymore. But for  
9 legitimate business purposes, to visit the people at NexPoint  
10 who were in the office, since there are no Highland people in  
11 the office, or to handle a deposition, you know, there was  
12 nothing I thought inappropriate about that.

13 Q Did the Debtor tell you that they would allow you to enter  
14 the offices any time you just believed that it would be  
15 appropriate to do that?

16 A I used my business judgment.

17 MR. MORRIS: I move to strike.

18 BY MR. MORRIS:

19 Q I'm asking you a very --

20 THE COURT: Sustained.

21 BY MR. MORRIS:

22 Q -- specific question, sir. Did the Debtor ever tell you  
23 that they -- that you would be permitted to enter their  
24 offices after December 30th if you, in your own personal  
25 discretion, believed it to be appropriate?

1 A No.

2 Q Did the Debtor provide you any exception to their demand  
3 that you vacate the offices, without access, by and after  
4 December 30th?

5 A I always do what I think is appropriate and in the best  
6 interests. I don't know. I didn't know the specifics of the  
7 Debtor's -- okay, yeah, what the specifics of the Debtor was.

8 Q Despite the unambiguous nature of the Debtor's demands  
9 letter, on Tuesday you just walked right into the Debtor's  
10 office and sat for the deposition, correct?

11 A I believe that was reasonable, yes.

12 Q Okay. But you didn't -- you didn't have the Debtor's  
13 approval to do that, correct?

14 A We didn't have technology to do it anywhere else, so if  
15 the deposition was going to occur, it had to occur there.

16 Q Sir, --

17 MR. MORRIS: Move to strike.

18 THE COURT: Sustained.

19 BY MR. MORRIS:

20 Q And I ask you to just listen very carefully. And if it's  
21 not clear to you, please let me know. You did not have the  
22 Debtor's approval to enter their offices on Tuesday to give  
23 your deposition, correct?

24 A No.

25 Q And you did not even bother to ask the Debtor for

1 permission, correct?

2 A I'm prohibited from contacting them, so no, I did not.

3 Q Okay. Let's talk about other events that occurred after  
4 the entry of the TRO. We talked earlier about how you  
5 interfered with Mr. Seery's trading activities on behalf of  
6 the CLOs around Thanksgiving. Do you remember that?

7 A Yes.

8 Q But after the TRO was entered, the K&L Gates Clients also  
9 interfered with the Debtor's trading activities, correct?

10 A No.

11 MR. MORRIS: Can we go to Exhibit K, please? Can we  
12 start at the first page? And scroll down just a bit.

13 BY MR. MORRIS:

14 Q Do you see there's an explanation there about the Debtor's  
15 management of CLOs?

16 A Yes.

17 Q And there's a recitation of the history that we talked  
18 about earlier, where around Thanksgiving you intervened to  
19 block those trades?

20 A Yes.

21 Q And then the next paragraph refers to the prior motion  
22 that was brought by the CLO entities? I mean, the K&L Gates  
23 entities, right?

24 A Yes.

25 Q And you were aware of that motion at the time it was made,

1 right?

2 A Yes.

3 Q And you were supportive of the making of that motion,  
4 right?

5 A Supportive? Yes.

6 MR. MORRIS: And scroll down to the next paragraph,  
7 please.

8 BY MR. MORRIS:

9 Q Okay. So, my colleague wrote that, "On December 22nd,  
10 2020, employees of NPA and HCMFA notified the Debtor that they  
11 would not settle the CLO sale of the AVAYA and SKY  
12 securities." Have I read that right?

13 A Yes.

14 Q And that took place six days after the motion that the  
15 Court characterized as frivolous was denied on December 16th?

16 A Yes. I wasn't aware of that, for what that's worth.

17 Q Okay. You personally instructed the employees --  
18 withdrawn. NPA -- that refers to NexPoint, correct?

19 A Yes.

20 Q That's an entity you own and control, right?

21 A I -- largely.

22 Q And that's one of the Advisors we defined earlier, right?

23 A Yes.

24 Q And HCMFA, that's Fund Advisors, another advisory firm  
25 that you own and control, correct?

1 A Yes.

2 Q And you personally instructed, on or about December 22nd,  
3 2020, employees of those Advisors to stop doing the trades  
4 that Mr. Seery had authorized with respect SKY and AVAYA,  
5 right?

6 A Yeah. Maybe we're splitting hairs here, but I instructed  
7 them not to trade them. I never gave instructions not to  
8 settle trades that occurred. But that's a different ball of  
9 wax.

10 Q Okay. But you did instruct them not to execute trades  
11 that had not been made yet, right?

12 A Yeah. Trades that I thought were inappropriate, for no  
13 business purpose, I -- I told them not to execute.

14 Q Okay. You actually learned that Mr. Seery wanted to  
15 effectuate these trades the Friday before, right?

16 A I don't know, but what did I do? When did I know it?  
17 What did I do? When I knew things are inappropriate, I  
18 reacted immediately. I don't -- I don't -- whenever --  
19 whenever I found out about inappropriate things, I reacted to  
20 the best of my ability.

21 Q Okay.

22 MR. MORRIS: I move to strike, Your Honor.

23 THE COURT: Sustained.

24 Mr. Dondero, I'm going to -- I'm going to interject some  
25 instructions once again here. Remember we talked about early

Dondero - Direct

74

1 on, and I know you've testified before, but I'll repeat it:  
2 You need to just give direct yes or no answers.

3 And let me just say that we see witnesses all the time do  
4 what you're doing here, and that is they feel they need to say  
5 more than yes or no. They feel the need to clarify or  
6 supplement the yes or no answer they give. And just to remind  
7 you how this works, your lawyer, Mr. Bonds, is going to be  
8 given the opportunity when Mr. Morris is through to ask you  
9 all the questions he wants, and that will be your chance to  
10 clarify yes and no answers to the extent he asks you to  
11 revisit certain of these questions and answers. Okay?

12 So I'm going to remind you once again: yes or no or  
13 direct -- you know, other appropriate direct answers. Mr.  
14 Bonds can let you clarify later. All right?

15 Mr. Morris, continue.

16 MR. MORRIS: Okay. Thank you, Your Honor.

17 Can we please put up on the screen Exhibit L? And at the,  
18 I guess, the bottom of Page 1.

19 BY MR. MORRIS:

20 Q This is an email string. And --

21 MR. MORRIS: Go to the email below that, please.  
22 Yeah. Okay. Right there.

23 BY MR. MORRIS:

24 Q This is an email from Mr. Seery dated December 18th at  
25 (garbled) :30 p.m. Do you see that?

Dondero - Direct

75

1 A Yes.

2 Q And in the substantive portion of his email, continuing on  
3 to the next page, he's giving instructions to sell certain SKY  
4 and AVAYA securities that are held by CLOs, correct?

5 A Yes.

6 Q And Mr. Sowin forwarded this email to you, right?

7 A Yes.

8 MR. MORRIS: If we can scroll up.

9 BY MR. MORRIS:

10 Q And you forwarded it to Mr. Ellington, right? I'm sorry.  
11 Let's just give Ms. Canty a chance.

12 MR. MORRIS: Keep scrolling up.

13 BY MR. MORRIS:

14 Q So, Mr. Sowin forwarded it to you at 3:34 p.m. Do you see  
15 that?

16 A Yes.

17 Q And if we scroll up, you turn around and give it to Mr.  
18 Ellington a few minutes later, right?

19 A Yes.

20 Q So that you and Mr. Ellington and Mr. Sowin are all aware  
21 that Mr. Seery wants to sell AVAYA and SKY securities on  
22 behalf of the CLOs, right?

23 A Yes.

24 Q Why did you decide to forward this email to Mr. Ellington?

25 A Ellington's role has been of settlement counsel that

Dondero - Direct

76

1 supposedly everybody is able to talk to to try and bridge some  
2 kind of settlement. Ellington, I thought, should be aware of  
3 things that would make settlement more difficult or create  
4 liabilities for the Debtor. And so I thought it was  
5 appropriate for him to know.

6 Q Okay. This is the email that caused you to put a stop to  
7 the trades that Mr. Seery wanted to effectuate, correct?

8 A This is the -- I'm sorry. Ask the question again. This  
9 is the email that what?

10 Q This is -- this is how you learned that Mr. Seery wanted  
11 to effectuate rates in AVAYA and SKY securities, right?

12 A I -- I learned about it pretty early on of him trading it.  
13 I don't know if it was this email or -- or one of the others.  
14 But yes, it was from -- it was from Joe Sowin.

15 Q And you would agree with me, would you not, that you  
16 personally instructed the employees of the Advisors not to  
17 execute the very trades that Mr. Seery identifies in this  
18 email, correct?

19 A Yes.

20 Q At no time after December 10th, when the TRO was entered  
21 into, did you instruct the employees of the Funds that you own  
22 and control not to interfere or impede the Debtor's management  
23 of the CLOs, correct?

24 MR. BONDS: Can you repeat the question? I'm sorry.

25 BY MR. MORRIS:

Dondero - Direct

77

1 Q At no time after December 10th, when the TRO was entered,  
2 did Mr. Dondero instruct any employee of either of the  
3 Advisors that he owns and controls not to interfere or impede  
4 with the Debtor's business and management of the CLOs,  
5 correct?

6 A I did not.

7 Q Okay. Neither you nor anybody that you know of ever  
8 provided a copy of the TRO to the employees of the Advisors  
9 that you own and control, correct?

10 A I don't know.

11 Q Okay. After the TRO was entered, the K -- after the TRO  
12 was entered, and after the hearing on December 16th, the K&L  
13 Gates Clients sent three more letters to the Debtor, right?

14 A Yes.

15 Q Okay.

16 MR. MORRIS: Your Honor, those are Exhibits M as in  
17 Mary, N as in Nancy, and X as in x-ray.

18 THE COURT: Okay.

19 MR. MORRIS: Unless the witness thinks there is a  
20 need to look at them specifically -- oh, let me just ask a  
21 couple of questions.

22 BY MR. MORRIS:

23 Q Mr. Dondero, in those letters, it's your understanding  
24 that the K&L Gates Clients again requested that the Debtor not  
25 trade any securities on behalf of the CLOs, right?

1 A Yes.

2 Q And it's your understanding that in those letters the K&L  
3 Gates Clients suggested that they might seek to terminate the  
4 CLO management agreements to which the Debtor was a party,  
5 correct?

6 A I don't know specifically, but that wouldn't surprise me.

7 Q Okay.

8 A So, --

9 Q Is it your understanding that the K&L Gates Clients also  
10 sent the letter a Debtor -- the Debtor a letter in which they  
11 asserted that your eviction from the offices might cause them  
12 damages and harm?

13 A I know there was objections to me -- I assume so. I don't  
14 know specifically.

15 Q And you were aware of these letters at the time that they  
16 were being sent, right?

17 A I'm sorry, what?

18 Q You were aware of these letters at the time they were  
19 being sent by the K&L Gates Clients, right?

20 A Generally, yes.

21 Q And you were generally supportive of the sending of those  
22 letters, right?

23 A I'm always supportive of doing what we believe is the  
24 right thing, yes.

25 Q And in this case, you were supportive of the sending of

Dondero - Direct

79

1 these three letters, correct?

2 A I -- yes.

3 Q In fact, you pushed and encouraged the chief compliance  
4 officer and the general counsel to send these letters, right?

5 A I push them to do the right thing. I didn't push them  
6 specifically.

7 Q Okay. At the time the letters were sent, you were aware  
8 that the K&L Gates Clients had filed that motion that was  
9 heard on the 16th of December, correct?

10 A Yes.

11 Q And you were aware that they advanced the very same --  
12 withdrawn. You're aware that in the letters they advance some  
13 of the very same arguments that Judge Jernigan had dismissed  
14 as frivolous just six days earlier, right?

15 A I wasn't at the hearing. I don't know if it was the same  
16 arguments or similar arguments. I -- I can't -- I can't  
17 corroborate the similarity or contrast the differences between  
18 the two.

19 Q All right. So it's fair to say, then, that you were  
20 supportive of the sending of these letters, you were aware of  
21 the December 16 argument, but you didn't take the time to see  
22 whether or not any of the arguments being advanced in the  
23 letters were consistent or any different from the arguments  
24 that were made at the December 16th hearing, correct?

25 A Correct. I wasn't directly involved, but still believed

Dondero - Direct

80

1 that fundamentally Seery's behavior was wrong.

2 Q You never instructed the K&L Gates Clients to withdraw the  
3 three letters that were sent after December 10th, correct?

4 A No.

5 Q And you're aware that the Debtor had demanded that those  
6 letters be withdrawn or it would seek a temporary restraining  
7 order against the K&L Gates Clients, correct?

8 A I'm not aware of the back and forth.

9 Q Okay. Let's talk about your communications with Mr.  
10 Ellington and Mr. Leventon. You communicated with them on  
11 numerous occasions after December 16th, correct?

12 A No.

13 Q No, you didn't communicate with them many times after  
14 December 10th?

15 A You're lumping in Ellington and Isaac, and numerous times  
16 is a bad clarifier, so the answer is no.

17 Q I appreciate that. You communicated many times with Mr.  
18 Ellington after December 10th, right?

19 A Not -- not outside shared services, pot plan, and him  
20 being the go-between between me and Seery. I would say  
21 virtually none.

22 Q Okay. On Saturday, December 12th, two days after the  
23 temporary restraining order was entered against you, Mr.  
24 Ellington was involved in discussions with your personal  
25 counsel about who would serve as a witness at the upcoming

1 December 16th hearing, correct?

2 A I don't -- I don't remember.

3 Q Let's see if we can refresh your recollection.

4 MR. MORRIS: Can we please put up Exhibit P? Can we  
5 scroll down? Okay.

6 BY MR. MORRIS:

7 Q Do you see where Mr. Lynn writes you an email on Saturday,  
8 December 12th, and he says, among other things, it looks like  
9 trial?

10 A Yes.

11 Q And then if we scroll up a little bit, he wrote further,  
12 "That said, we must have a witness now." Have I read that  
13 accurately?

14 A Yes.

15 Q Okay.

16 MR. MORRIS: Can we scroll back up?

17 BY MR. MORRIS:

18 Q And this is Mr. Ellington's response, right?

19 A Yes.

20 Q Can you read Mr. Ellington's response for Judge Jernigan?

21 A (reading) It will be J.P. Sevilla. I'll tell him that he  
22 needs to contact you first thing in the morning.

23 Q Is it your testimony that this email relates to --  
24 withdrawn. Mr. Ellington is not your personal lawyer, right?

25 A No. Mr. Ellington has been functioning as settlement

Dondero - Direct

82

1 counsel, trying to bridge settlement, --

2 Q Okay.

3 A -- which is what this email looks like to me.

4 Q Okay. I'll let -- I'll let the judge --

5 MR. MORRIS: I move to strike, Your Honor.

6 THE COURT: Sustained.

7 BY MR. MORRIS:

8 Q So, after the TRO was entered, you and Mr. Ellington not  
9 only communicated but Mr. Ellington was actively involved in  
10 identifying witnesses to testify on behalf of your interests  
11 at the December 16th hearing, correct?

12 A I -- I don't know what the witness was for, but I believe  
13 Ellington was doing his job as settlement counsel, trying to  
14 facilitate settlement. I don't -- I have no reason to think  
15 this was anything more nefarious.

16 Q Okay. You looked to Mr. Ellington for leadership in  
17 coordinating with all of the lawyers who were working for you  
18 and your personal interests, right?

19 A I'm not agreeing with that.

20 Q No? All right.

21 MR. MORRIS: Let's look at the next exhibit. I think  
22 it's Exhibit Q. And if we could stop right there.

23 BY MR. MORRIS:

24 Q There's an email from Douglas Draper, do you see that, on  
25 December 16th?

1 A Yes.

2 Q So this is after the TRO was entered into, right?

3 A I believe so.

4 Q And Mr. Draper represents Get Good and Dugaboy; is that  
5 right?

6 A I believe so.

7 Q And he was new to the case at that moment in time, right?

8 A On or about, I believe so.

9 Q And he was looking to -- he was looking for a joint  
10 meeting among all of the lawyers representing your personal  
11 interests, right?

12 A No. I think he was trying to coordinate -- coordinate or  
13 understand whatever. But not everybody -- he doesn't just  
14 talk to lawyers around my interests. I mean, and he hasn't  
15 sought agreements with just lawyers reflecting my interests.

16 Q You forwarded Mr. Draper's email to Mr. Ellington, right?

17 A Yes.

18 Q But you can't remember why you did that, right, or at  
19 least -- withdrawn. You couldn't remember as of Tuesday's  
20 deposition why you forwarded this email to Mr. Ellington,  
21 right?

22 A Not specifically. But, again, Ellington is settlement  
23 counsel.

24 MR. MORRIS: I move to strike, Your Honor, after the  
25 initial phrase "Not specifically."

Dondero - Direct

84

1 THE COURT: Sustained.

2 MR. MORRIS: Can we scroll up a little bit, please?

3 BY MR. MORRIS:

4 Q Mr. Lynn responded initially with a reference to the  
5 assumption that a particular lawyer was with K&L Gates, right?

6 A Yes.

7 MR. MORRIS: And if we could scroll up a little bit.

8 BY MR. MORRIS:

9 Q That's where you forward this email to Mr. Ellington,  
10 right?

11 A Yes.

12 Q And can you read to Judge Jernigan what you wrote at 1:33  
13 p.m.?

14 A (reading) I'm going to need you to provide leadership  
15 here.

16 Q But at least as of Tuesday's deposition, you couldn't  
17 remember why you needed Mr. Ellington to provide leadership,  
18 right?

19 A Correct. Nor if he did.

20 MR. MORRIS: I move to strike the latter portion of  
21 the answer, Your Honor.

22 THE COURT: Sustained.

23 BY MR. MORRIS:

24 Q So you have no --

25 (Echoing.)

Dondero - Direct

85

1 MR. MORRIS: We're getting --

2 THE WITNESS: Can I -- can I hold -- can I hold on  
3 for one second here? Can I just put you guys on mute, please?

4 MR. MORRIS: Sure.

5 (Pause.)

6 THE COURT: All right.

7 THE CLERK: John, there's some feedback again. I'm  
8 sorry.

9 MR. MORRIS: That's okay.

10 THE COURT: Mr. Bonds, --

11 MR. MORRIS: We lost Mr. --

12 THE COURT: Mr. Bonds, what's going on?

13 MR. MORRIS: We've lost -- the screen --

14 THE COURT: You know you can't counsel your client in  
15 the middle of court testimony. I thought maybe Mr. Dondero  
16 had some non-legal thing going on in the background. Mr.  
17 Bonds?

18 MR. BONDS: Your Honor, I -- I did not in any way  
19 counsel Mr. Dondero.

20 THE COURT: Okay. Well, I'll take your  
21 representation on that. Are we ready to go forward?

22 MR. MORRIS: I'll readily accept Mr. Bonds'  
23 representation as well, Your Honor.

24 THE COURT: Okay.

25 MR. MORRIS: But I'd ask that it not happen again.

1 THE COURT: Well, fair enough. I think Mr. Bonds  
2 understands.

3 BY MR. MORRIS:

4 Q Mr. Dondero, you have no recollection of why you forwarded  
5 this email to Mr. Ellington and why you told him you needed  
6 him to provide leadership, correct?

7 A Correct.

8 MR. MORRIS: And if we can scroll up, can we just see  
9 how Mr. Ellington responded?

10 BY MR. MORRIS:

11 Q All right. And can you just read for Judge Jernigan what  
12 Mr. Ellington said on December 16th in response to your  
13 statement that you're going to need him to provide leadership  
14 here?

15 A (reading) On it.

16 Q Thank you. In your deposition, you testified without  
17 qualification that Scott Ellington and Isaac Leventon did not  
18 participate in the drafting of a joint interest or mutual  
19 defense agreement. Do you recall that testimony?

20 A Yes, as far as I knew.

21 Q And you also testified that you never discussed with  
22 either of them the topic of a joint defense or mutual defense  
23 agreement; is that right?

24 A Correct. That was Draper.

25 Q Okay.

Dondero - Direct

87

1 MR. MORRIS: Can we put up Exhibit 11, please? I  
2 apologize. It's Exhibit W. Okay. Can we stop right there?

3 BY MR. MORRIS:

4 Q This is an email between some of your counsel and Mr.  
5 Ellington. Do you see that?

6 A Yes.

7 Q And a common interest agreement is attached to the  
8 communication. Is that a fair reading of the portion of the  
9 exhibit that's on the screen?

10 A Yes.

11 MR. MORRIS: And can we scroll to the top of the  
12 exhibit, please?

13 BY MR. MORRIS:

14 Q And do you see that there is an email exchange between Mr.  
15 Ellington and Mr. Leventon concerning the common interest  
16 agreement?

17 A Yes.

18 Q Okay. So it's your testimony that this email may exist  
19 but you had no idea that Mr. Ellington and Mr. Leventon were  
20 working with your lawyers to draft a common interest  
21 agreement? Is that your testimony?

22 A I wasn't part of this. It looks to me like they were just  
23 included in a -- a final draft. And, again, Ellington is  
24 settlement counsel. I -- but I don't want to speculate why or  
25 what they were doing.

Dondero - Direct

88

1 Q Do you remember that I asked you a few questions the other  
2 day about Multi-Strat financial statements and whether or not  
3 you'd ever given -- you'd ever received any of those documents  
4 from Mr. Ellington and Mr. Leventon?

5 A Yes.

6 Q Okay. And you testified under oath that you never got any  
7 financial information, including balance sheets, concerning  
8 Multi-Strat from either of those lawyers, correct?

9 A I -- hmm. I -- I don't remember. Yeah, I don't remember.  
10 I may have to clarify that, but I don't remember.

11 Q You testified under oath the other day that you wouldn't  
12 even think to ask them for financial information relating to  
13 Multi-Strat because it's not natural for them to have it,  
14 right?

15 A I -- I'm sorry.

16 THE WITNESS: Your Honor, do I just have to answer  
17 these questions yes or no, or is that the -- can I clarify at  
18 all, or can I --

19 THE COURT: Well, I mean, if the question simply  
20 directs a yes or no answer, that's correct, you just answer  
21 yes or no. And I think this one did.

22 Again, your lawyer is going to have the chance to do  
23 follow-up examination later.

24 BY MR. MORRIS:

25 Q So let me try again. During your deposition, you

Dondero - Direct

89

1 testified under oath without qualification that you never got  
2 any financial information, including balance sheets,  
3 concerning Multi-Strat from Scott Ellington or Isaac Leventon,  
4 correct?

5 A I believe I might have misspoken there.

6 Q Okay. But that was your testimony the other day, right?

7 A Yes.

8 Q And today, you believe you might have gotten that  
9 information from them, right?

10 A Only because Ellington was supposed to be the go-between  
11 and I couldn't go directly to somebody. But he wouldn't  
12 normally have that information, which is what I was saying.

13 MR. MORRIS: Your Honor, I have an exhibit that's not  
14 on the Debtor's exhibit list, and I was going to use it for  
15 impeachment purposes to establish the fact that Mr. Ellington  
16 and Mr. Leventon in fact gave to Mr. Dondero, after December  
17 10th, financial information concerning Multi-Strat, which Mr.  
18 Dondero had previously denied receiving. May I -- may I use  
19 that document to impeach Mr. Dondero?

20 THE COURT: You may.

21 MR. BONDS: Your Honor, I'm going to object. This is  
22 pretty clearly something that should have been disclosed and  
23 it wasn't.

24 THE COURT: Well, he says it's purely to impeach the  
25 testimony that Mr. Dondero just now gave. So we'll -- we'll

Dondero - Direct

90

1 see the document and, you know, I'll either agree with that  
2 being impeachment or not. So, he may proceed.

3 MR. BONDS: Your Honor, I think that the testimony  
4 -- Your Honor, I'm sorry. I think that the testimony that was  
5 (inaudible) given was that he thought that he may have talked  
6 to Scott or Isaac, not that he did not.

7 MR. MORRIS: Your Honor, if I may, the testimony the  
8 other day was unequivocal and unambiguous that not only didn't  
9 he get this information from the two lawyers, but that he had  
10 no reason to believe he would ever get the information from  
11 those two lawyers.

12 I appreciate the fact that Mr. Dondero today is suggesting  
13 that he may have, but I -- I would still like to use this  
14 document to refresh his recollection and to impeach even the  
15 possibility that he's giving this qualified testimony that he  
16 may have.

17 THE COURT: All right.

18 MR. MORRIS: There's no doubt that he did.

19 THE COURT: I overrule the objection. You can go  
20 forward.

21 MR. MORRIS: Can we please put up on the screen -- I  
22 believe it's Debtor's Exhibit AA. And if we can scroll down,  
23 please. And just stop, yeah, towards the top. All right.  
24 Stop right there.

25 BY MR. MORRIS:

Dondero - Direct

91

1 Q Do you see in the first email Mr. Klos -- he's an employee  
2 of the Debtor, right?

3 A Yes.

4 Q And he provides Multi-Strat balance sheet and financial  
5 information to Mr. Leventon, Mr. Ellington, and Mr.  
6 Waterhouse. Do you see that?

7 A Yes. He's the person I would normally go to.

8 Q Okay. And they're all Debtor employees, right?

9 A Yes.

10 Q Okay. And then Mr. Leventon sends it to you and Mr.  
11 Ellington on February 4th, 2020; is that correct?

12 A Yes.

13 Q And this is confidential information; is that fair?

14 A No.

15 Q Okay. Let's -- let's talk about the next --

16 A No, it's not -- wait, wait, hold on a second. Judge, I  
17 need to clarify this. I -- it's not confidential information.  
18 It's available to every investor, of which I was one of them.  
19 Okay? So, let's -- let's not mischaracterize this as some  
20 corporate secret.

21 Q Okay. You interfered with the Debtor's production of  
22 documents; isn't that right?

23 A No.

24 Q Several times in the last year, various entities have  
25 requested that Dugaboy produce its financial statements,

Dondero - Direct

92

1 correct?

2 A Dugaboy is my personal trust. It's not an entity of the  
3 Debtor in any form or fashion.

4 Q Sir, you're aware that several times in the last year  
5 various entities requested that the Debtor produce Dugaboy  
6 financial information, correct?

7 A The Debtor is not in a position to do it. I -- I don't  
8 know if it's been several times or whatever, but it's not  
9 appropriate.

10 MR. MORRIS: I move to strike, Your Honor.

11 THE COURT: Sustained.

12 BY MR. MORRIS:

13 Q I'll try one more time. If we need to go to the  
14 transcript, we can. It's a very simple question. You knew  
15 and you know that several times in the last year various  
16 entities have requested that the Debtor produce Dugaboy  
17 financial statements, correct?

18 A Yes.

19 Q Do you recall at the deposition the other day I asked you  
20 whether you had ever discussed with Mr. Ellington and Mr.  
21 Leventon whether or not the Dugaboy financial statements  
22 needed to be produced, and you were directed not to answer the  
23 question by counsel and you followed those directions?

24 A Yes.

25 Q But you communicated with at least one employee concerning

1 the production of the Dugaboy financial statements, correct?

2 A Yes.

3 Q And that's Melissa Schroth; is that right?

4 A Yes.

5 Q She's an executive accountant employed by the Debtor,  
6 right?

7 A Yes.

8 Q And on December 16th, after the TRO was entered into, you  
9 instructed Ms. Schroth not to produce the Dugaboy financials  
10 without a subpoena, correct?

11 A That was the advice I had gotten from counsel, yes.

12 Q Okay. The Dugaboy and Get Good financial statements are  
13 on the Debtor's platform, correct?

14 A I do not know.

15 Q There is no shared services agreement between Dugaboy or  
16 Get Good and the Debtor, correct?

17 A I don't know.

18 Q You're not aware of any; is that fair?

19 A Yes.

20 Q Okay.

21 MR. MORRIS: Can we put on the screen Exhibit R? And  
22 can you scroll down a bit?

23 BY MR. MORRIS:

24 Q Okay. That's Melissa Schroth at the top there; is that  
25 right?

1 A Yes.

2 Q And these are texts that you exchanged with her after the  
3 TRO was entered into, correct?

4 A Yes.

5 MR. MORRIS: Can we scroll down a little bit?

6 BY MR. MORRIS:

7 Q And do you see on December 16th you sent Ms. Schroth an  
8 email -- I apologize -- a text that says, "No Dugaboy details  
9 without subpoena"?

10 A Yeah.

11 Q But you can't remember why you sent this text, correct?  
12 At least you couldn't as of Tuesday?

13 A I believe it was on advice of counsel.

14 Q But that's not what you said on Tuesday, correct?

15 A I don't remember.

16 Q You sent this text even though you knew that various  
17 entities had requested the Dugaboy financials, but you have no  
18 recollection of ever talking to anyone at any time about the  
19 production of those documents, right?

20 A Can you repeat the question?

21 Q I'll move on. Let me just -- last topic, and then I'm  
22 going to respectfully request that we just take a short break.  
23 You're familiar with the law firm of Baker & McKenzie; is that  
24 right?

25 (Echoing.)

Dondero - Direct

95

1 A I'm sorry. You broke up on us there.

2 Q No problem. You're familiar with the law firm Baker &  
3 McKenzie, correct?

4 A Yes.

5 Q That firm has never -- never represented you or any entity  
6 in which you have an ownership interest, correct?

7 A Correct.

8 Q But in December, the Employee Group, of which Mr. Leventon  
9 and Mr. Ellington was a part, was considering changing counsel  
10 from Winston & Strawn to Baker & McKenzie, right?

11 A I believe so.

12 Q And you asked -- and because of that, you specifically  
13 asked Mr. Leventon for the contact information for the lawyers  
14 at Baker & McKenzie, right?

15 A I believe so.

16 Q Okay.

17 MR. MORRIS: Can we put up Exhibit S, please?

18 BY MR. MORRIS:

19 Q And who is that email sent from? I apologize. Withdrawn.  
20 Who is that text message exchange with?

21 A Isaac Leventon.

22 Q Okay. And Mr. Leventon was an employee of the Debtor  
23 after December 10th, correct?

24 A Yes.

25 MR. MORRIS: Can we scroll down a little bit?

1 BY MR. MORRIS:

2 Q And on December 22nd, you asked Mr. Leventon for the  
3 contact information at Baker & McKenzie, correct?

4 A Yes.

5 Q And the reason you asked Mr. Leventon for the contact  
6 information, that was in connection with the shared defense or  
7 mutual defense agreement, right?

8 A I -- I don't remember why. It might have just been for my  
9 records. I don't know.

10 Q The only reason that you could think of for asking for  
11 this information was for the shared defense or mutual defense  
12 agreement, correct?

13 A I -- no, it -- I don't know and I don't want to speculate.  
14 I don't want to -- I don't want to speculate. I -- did -- I  
15 don't think I ever got -- I don't know what your point is.

16 MR. MORRIS: May we please go back to the transcript  
17 at Page 136? At the bottom, Line 23.

18 BY MR. MORRIS:

19 Q Were you asked this question and did you give this answer?

20 "Q Do you recall asking Isaac Leventon for the  
21 contact information for the -- for the lawyers at  
22 Bakers & McKenzie?

23 "A I -- I don't -- I don't -- it might have been for  
24 part of the shared defense, mutual defense whatever  
25 agreement, but that's -- that's the only reason I would

Dondero - Direct

97

1 have asked for it."

2 Q Did you give that answer to my question?

3 A Yeah. I shouldn't have speculated.

4 Q Okay. But that's the answer you gave the other day; is  
5 that right?

6 A I shouldn't have speculated. That's my answer today.

7 Q And today -- withdrawn. In fact, you wanted the Baker  
8 contact information in order to help Mr. Draper coordinate the  
9 mutual defense agreement, correct?

10 A I don't want to speculate.

11 MR. MORRIS: Can we go to Page 139, please? Lines 2  
12 to 5.

13 BY MR. MORRIS:

14 Q Did you -- did you hear this question and did you give  
15 this answer on Tuesday?

16 "Q Why did you want the Baker & McKenzie contact  
17 information?

18 "A I was trying to help Draper coordinate the mutual  
19 shared defense agreement, period."

20 Q Did you give that answer to my question on Tuesday?

21 A Yes.

22 MR. MORRIS: Your Honor, I'd respectfully request a  
23 short break to see if I've got anything more.

24 THE COURT: All right. Well, I was going to ask you  
25 how much more do you think you have. We've been going almost

Dondero - Direct

98

1 two hours.

2 So we'll take a break. Let's make it a ten-minute break.

3 And then, depending on how much more you have and how much Mr.

4 Bonds is going to have, we'll figure out are we going to need

5 a lunch break in just a bit.

6 All right. So it's 12:00 noon Central. We'll come back

7 at 12:10. Ten minutes.

8 MR. MORRIS: Your Honor, may I have an instruction of  
9 the witness not to check his phone for any purposes, not to  
10 make -- not to communicate with anybody until -- until his  
11 testimony is completed?

12 THE COURT: All right. Any -- any --

13 MR. BONDS: Your Honor, he's going to speak with me.

14 THE COURT: Pardon?

15 MR. BONDS: I assumed he will speak to me about just  
16 general events. I mean, I don't want to be in breach of some  
17 order.

18 MR. MORRIS: Yeah. I would -- I would -- I would ask  
19 for -- you know, it's not -- he's on the stand. He's still on  
20 the stand.

21 THE COURT: Yeah. He --

22 MR. MORRIS: He shouldn't be conferring with counsel,  
23 either. No disrespect to Mr. Bonds at all.

24 THE COURT: Exactly. I mean, you all can talk about,  
25 you know, the national champion football game or whatever, but

Dondero - Direct

99

1 it would be counseling your client in the middle of testimony  
2 if you -- if you talk about this case at the moment. So, you  
3 know, --

4 MR. BONDS: I understand, Your Honor.

5 THE COURT: All right.

6 MR. BONDS: I just didn't want to be --

7 THE COURT: All right. So now we'll come back at  
8 12:11.

9 THE CLERK: All rise.

10 MR. MORRIS: Thank you, Your Honor.

11 (A recess ensued from 12:01 p.m. until 12:12 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated. This is Judge  
14 Jernigan. We're going back on the record in Highland Capital  
15 versus Dondero. We have taken an 11-minute break. It looks  
16 like we have Mr. Dondero and counsel back. And Mr. Morris,  
17 are you out there, ready to proceed?

18 MR. MORRIS: I am, Your Honor. And I do have just a  
19 few more questions.

20 THE COURT: Okay. I'm sorry. Mr. Lynn, I see you're  
21 there in the room with Mr. Dondero. Now, did you want to --

22 MR. LYNN: Here's Mr. Bonds. I apologize. He was in  
23 the restroom.

24 THE COURT: Okay. All right. Everyone ready to  
25 proceed?

Dondero - Direct

100

1 MR. MORRIS: Yes, Your Honor.

2 THE COURT: Okay. Mr. Morris, go ahead.

3 MR. MORRIS: Thank you, Your Honor.

4 DIRECT EXAMINATION, RESUMED

5 BY MR. MORRIS:

6 Q Can you hear me, Mr. Dondero?

7 A Yes.

8 Q Did you ever discuss the request of any party to produce  
9 the financial statements of Get Good and Dugaboy with Scott  
10 Ellington?

11 A Not that I recall.

12 Q Did you ever communicate with Mr. Leventon on the subject  
13 matter of whether or not the financial statements for Get Good  
14 and Dugaboy needed to be produced by the Debtor?

15 A No.

16 Q Those are the two questions that you were directed not to  
17 answer the other day, right?

18 A I don't remember.

19 Q Okay. You mentioned that Mr. Ellington serves in some  
20 capacity as settlement counsel. Do I have that right?

21 A Yes.

22 Q Do you know if there's any exception in the TRO that  
23 permits you to communicate directly with Mr. Ellington in his  
24 so-called capacity as settlement counsel?

25 A There was no change in his status in the TRO. It's -- and

Dondero - Direct

101

1 I think he was still used by both the Debtor and by me in that  
2 function.

3 Q You said that -- you testified earlier that you understood  
4 that you were prohibited from speaking with the Debtor's  
5 employees, correct?

6 A Except for -- except for with regard to the pot plan,  
7 shared services, and Ellington as settlement counsel. But I  
8 continued to talk to employees about the pot plan as recently  
9 as the end of the year, and I continued to talk to employees  
10 about shared services based on the shared services proposal  
11 that was sent to Ellington and forwarded to me as recently as  
12 two days ago.

13 Q You never -- you never read the TRO, right?

14 A No.

15 MR. MORRIS: Can we have it put up on the screen? I  
16 don't know the exhibit number, Ms. Canty, but hopefully it's  
17 clear on the exhibit list.

18 MS. CANTY: I'm sorry, John. Can you repeat what  
19 you're looking for?

20 MR. MORRIS: The TRO. (Pause.) Can we scroll down  
21 to Paragraph 2, please? Okay.

22 BY MR. MORRIS:

23 Q I appreciate the fact that you've never seen this before,  
24 Mr. Dondero, but let me know if I'm reading Section 2(c)  
25 correctly. "James Dondero is temporarily enjoined and

Dondero - Direct

102

1 refrained from" -- subparagraph (c) -- "communicating with any  
2 of the Debtor's employees, except for specifically -- except  
3 as it specifically relates to shared services currently  
4 provided to affiliates owned or controlled by Mr. Dondero."

5 Have I read that correctly?

6 A Yes.

7 Q Does that provide for any exceptions concerning the pot  
8 plan?

9 A The Independent Board requested a meeting on the pot plan.

10 Q Okay. But does it -- I appreciate that, and we'll talk  
11 about that in a moment, but my question is very specifically  
12 looking at the order. And I, again, appreciate that you've  
13 never seen it before. But looking at the order now, is there  
14 any exception for you to communicate with the Debtor's  
15 employees concerning the pot plan?

16 A I would think the pot plan would fall under that, since  
17 some of the pot plan value is coming from affiliated entities  
18 that are subject to the shared services agreement. I would  
19 think that would be reasonable, again, plus the -- well, it  
20 was the subject of a meeting with the Independent Board at the  
21 end of the month.

22 Q Okay.

23 A I still think it's the best alternative for this estate.

24 Q Okay. Did you -- did you ever -- did you ever ask  
25 anybody, on your behalf, have asked the Debtors whether they

1 agreed with what you believed was a reasonable interpretation  
2 of the restraining order?

3 A I did not.

4 Q Okay. And let's just deal with the notion of settlement  
5 counsel. Do you see anywhere in this TRO -- and if you want  
6 to read anything more, please let me know -- do you see  
7 anything in this TRO that would permit you to speak with Mr.  
8 Ellington in his so-called role as settlement counsel?

9 A Well, I would say, more importantly, I don't see anything  
10 that takes away his role as settlement counsel, which was  
11 formally done six months ago.

12 Q Okay. I did read Section 2(c) correctly, right?

13 A Yes.

14 Q And the only exception that's in Judge Jernigan's  
15 restraining order that she entered against you relates to  
16 shared services. Have I read that correctly?

17 A Yes.

18 Q Okay. Let's talk about the pot plan for a moment. After  
19 the TRO was entered, you were interested in continuing to  
20 pursue the pot plan; is that right?

21 A I still believe it's the best possible result for this  
22 estate.

23 Q And you sought a forum with the Debtor's board, correct?

24 A Yes.

25 Q And you knew that you couldn't speak directly with any

1 member of the Debtor's board unless your counsel and the  
2 Debtor's counsel was -- was present at the same time.

3 Correct?

4 A Yeah. As a matter of fact, I didn't go. I just had  
5 counsel go.

6 Q And the Debtor's board gave Mr. Lynn a forum for him to  
7 present your pot plan after the TRO was entered. Isn't that  
8 right?

9 A I believe so.

10 Q And are you aware that the Debtor's board spent more than  
11 an hour and a half with Mr. Lynn talking about your pot plan  
12 after the TRO was entered?

13 A Yes.

14 Q And is it fair to say that, notwithstanding Mr. Lynn's  
15 goodwill and Mr. Lynn's efforts to try to get to a successful  
16 resolution here, the terms on which the pot plan were offered  
17 were unacceptable to the Debtor?

18 A I wasn't there. I -- I don't know.

19 Q The Debtor never made a counteroffer, did it?

20 A Not that I heard.

21 Q You'll admit, will you not, that over the last year you or  
22 others acting on behalf -- on your behalf have made various  
23 pot plan proposals to the Official Committee of Unsecured  
24 Creditors?

25 A Quite generous pot plans that I think will exceed any

Dondero - Direct

105

1 other recoveries.

2 Q Okay. So you're aware that your pot plan was delivered  
3 either by you or on your behalf to the U.C.C., correct?

4 A I -- some were. Some, I don't know.

5 Q Okay. Has the U.C.C. ever made a counterproposal to you?

6 A Nope.

7 MR. MORRIS: I have no further questions, Your Honor.

8 THE COURT: All right. Pass the witness.

9 Mr. Bonds, do you have any time estimate for me,  
10 guesstimate?

11 MR. BONDS: My guess is, Your Honor, it'll be about  
12 an hour. I would hope that we could take some type of a  
13 break, just because I'm a diabetic and need to have some --

14 THE COURT: All right. Well, --

15 MR. MORRIS: I have no objection, Your Honor.

16 Whatever suits the Court. I'm willing to accommodate Mr.  
17 Bonds always.

18 THE COURT: Okay. Let's take a 45-minute break.  
19 Forty-five minutes. So, it's 12:22. We'll come back at seven  
20 minutes after 1:00 Central time.

21 All right. We're in recess.

22 THE CLERK: All rise.

23 (A luncheon recess ensued from 12:23 p.m. to 1:15 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Please be seated. This is Judge

1 Jernigan. We are going back on the record in Highland Capital  
2 Management versus Dondero. We took a lunch break. And when  
3 we broke, Mr. Bonds was going to have the chance to examine  
4 Mr. Dondero.

5 Let me just make sure we have, first, Mr. Dondero and Mr.  
6 Bonds. Are you there?

7 MR. BONDS: Yes, we are.

8 THE COURT: All right. Very good. I don't see your  
9 video yet, but -- there you are. All right. Mr. Morris, are  
10 you there?

11 MR. MORRIS: I am here. Can you hear me, Your Honor?

12 THE COURT: I can. All right.

13 MR. MORRIS: Thank you.

14 THE COURT: Well, we've got lots of other people, but  
15 that's all I'll make sure we have at this moment. All right.  
16 Mr. Bonds, you may proceed.

17 And, Mr. Dondero, I know you know this, but I'm required  
18 to remind you you're still under oath.

19 Okay, go ahead.

20 CROSS-EXAMINATION

21 BY MR. BONDS:

22 Q Before you resigned as portfolio manager, how long had you  
23 had with Highland Capital Management?

24 A Since inception in 1994.

25 Q Okay. And how long have your offices been at the

1 Crescent?

2 A Eight years.

3 Q Okay. Before you resigned as portfolio manager, did you  
4 spend a lot of time in the office?

5 A Yes. I spent every business day this -- or 2020,  
6 including COVID, in the office.

7 Q Okay. And this is the first time that you are not in the  
8 office, is that right, in decades?

9 A Yes.

10 Q Can you tell us about the shared services agreement that  
11 exists between the Debtor and the other entities in which you  
12 have an interest?

13 A NexPoint, NexBank, the DAF, HFAM, primarily. I don't know  
14 what other entities paid. Shared services, which is typical  
15 in finance, for centralized tax, accounting, RICO function, so  
16 that we don't have to have redundant, multiple high-paid  
17 people in different entities. We'd have them centralized and  
18 with collective experience and collective functionality. And  
19 so, historically and recently, they pay Highland for those --  
20 fees for those services. And I, as a non-paid employee, or a  
21 non-employee of Highland but a paid employee of NexBank -- of  
22 NexPoint, was -- and my occupancy and support were part of  
23 those shared services agreement.

24 Q What do those agreements allow those entities to do?

25 A Would it allow those entities to do? Well, to access the

1 Highland functionality as appropriate, because most of those  
2 entities, as is typical in finance, did not have their own  
3 functionality, legal, tax, and -- legal, tax, and accounting,  
4 but although they've been -- they've been building it lately  
5 in anticipation of the pot plan not going through at Highland.

6 Q Okay. Do those agreements allow you to share office space  
7 with --

8 MR. MORRIS: Objection --

9 THE WITNESS: Yes.

10 MR. MORRIS: -- to the form of the question, Your  
11 Honor. I think the exhibits and the agreements themselves  
12 would be the best evidence. They're not in evidence. They  
13 haven't been offered in evidence. I have no way to challenge  
14 the witness on anything he's saying. And on that basis, I'd  
15 -- it's not fair to the Plaintiff.

16 THE COURT: All right. Mr. Bonds, can I ask you to  
17 repeat your question? It was muffled and I was about to ask  
18 you to repeat it before I got the objection. So, repeat the  
19 question so I can --

20 MR. BONDS: Okay. I'm going to repeat it and amend  
21 it.

22 THE COURT: Okay.

23 BY MR. BONDS:

24 Q Is it your understanding that those agreements allow you  
25 to share office space with the Debtor?

1 A Yes. Virtually all of NexPoint's employees share the  
2 Highland office space as part of a shared services agreement.

3 Q Do those agreements allow you to share -- I'm sorry,  
4 excuse me. Strike that. What else do they allow?

5 A Typically is used in coordination of systems, servers,  
6 software, cloud software, Internet software, office software,  
7 tax, accounting, and legal functionality are all part of the  
8 shared services agreement, although, you know, much of -- much  
9 of that was stripped, you know, four or five months ago,  
10 especially legal functionality and the accounting  
11 functionality, without the concurrent adjustment in the  
12 building.

13 Q Okay. And you previously testified that you generally  
14 control NexPoint; is that correct?

15 A Generally. And the distinction I was trying to make is,  
16 you know, following the financial crisis in '08, compliance  
17 and the chief compliance officer has personal liability. along  
18 with the rest of the C Suite, and operates independently, with  
19 primary loyalty to the regulatory bodies. And they're --  
20 they're not controlled, bamboozled, or segued away from their  
21 responsibility. And at all times, they're supposed to be  
22 doing what they believe is right, regulatorily-compliant, and  
23 in the best interest of investors.

24 So that was the distinction I was drawing between, A, what  
25 I was trying to remind Thomas of, that he should be

1 independent of Seery, in terms of following what he believes  
2 is correct and regulatory-compliant. And I don't have to push  
3 the NexPoint compliance people and general counsel to do  
4 anything specific, nor could I. They are supposed to do what  
5 is right from a regulatory investor standpoint, and I believe  
6 that's what they've done.

7 Q All right. And what do you mean by the term or the usage  
8 of the word "generally"?

9 A Well, that's the distinction I was just drawing. I mean,  
10 generally, on regular business strategy, you know, major  
11 investments, you know, other business items, I'm in control of  
12 those entities. But in terms of the content and allegations,  
13 regulatory opinions that come from compliance and the general  
14 counsel, that is their best views on their own, knowing they  
15 have compliance obligations and personal liability.

16 Q Do you believe that NexPoint and its other owners and  
17 interest holders have rights independent from your own in this  
18 case?

19 A Right, yes, and obligations, and responsibilities to  
20 investors. I believe the attempt by the Debtor or Seery to  
21 hide behind contracts that the Debtor has with the CLOs are --  
22 are a spurious, incomplete argument. You know, they're not in  
23 compliance with those contracts. Bankruptcy alone is an event  
24 of default. Not having the key man -- the key men, the  
25 required requisite professionals that they're obligated to

1 contractually have working at the Debtor is a clear breach, in  
2 violation of those CLO contracts. Not having adequate staff  
3 or investment professionals to analyze, evaluate, or follow  
4 the investments in the portfolio is a clear violation. And  
5 specifically telling investors in the marketplace that you  
6 plan to terminate all employees, a date certain January 24th,  
7 is a proclamation that you're not going to be in any form able  
8 to be a qualified registered investment advisor or qualified  
9 in any which way to manage the portfolio or be in compliance  
10 with the CLO contracts.

11 I would -- I would further add that the selling of the  
12 securities, and the SKY securities, represent incomplete  
13 intentional incurring of loss against the investors. You have  
14 securities that are less liquid with, you know, restructured  
15 securities that have been owned for ten years, and they were  
16 sold during the most illiquid weeks of the year, the couple  
17 days before and after Thanksgiving, couple days before and  
18 after Christmas, where the investors could have gotten 10 or  
19 15 percent more on their monies if they were just sold in a  
20 normal week. It's -- it's preposterous to me. It's  
21 consistent with Seery not being an investment (garbled).

22 But it's preposterous to me that -- that this treatment of  
23 investors is allowed or being camouflaged as some kind of  
24 contractual obligation, when the investors have said these  
25 funds are clearly in transition and the manager clearly is

1 incapable of managing them. You know, please don't transact  
2 until the transition is complete. But Jim Seery has traded  
3 every day, including -- I don't know about today, but every  
4 day this week, selling securities for no investment rationale  
5 and no business purpose.

6 Q Are you also portfolio manager for NexPoint?

7 A Yeah, I'm a portfolio manager for the closed-end retail  
8 funds, which do have a higher fiduciary obligation than  
9 anything on the institutional side. I'm a portfolio manager  
10 for those '40 Act funds that are the primary owners of the  
11 CLOs that Seery is selling securities in for some unknown  
12 reason.

13 Q And what shared service agreements exist between NexPoint  
14 and the Debtor?

15 A Those are the shared service agreements I spoke of. I  
16 don't want to repeat myself.

17 Q And I'm going to call Highland Capital Management Fund  
18 Advisors, LP just Fund Advisors. Is that okay with you?

19 A Yes.

20 Q Okay. And you testified generally -- that you generally  
21 control Fund Advisors; is that correct?

22 A Yes.

23 Q Do you believe that Fund Advisors and its owners and  
24 interest holders have rights independent from your own in this  
25 case?

1 A Yes.

2 Q Are you the portfolio manager for Fund Advisors?

3 A Yes.

4 Q What shared services agreements exist between Fund  
5 Advisors and the Debtor?

6 MR. MORRIS: Objection, Your Honor. The agreements  
7 themselves are the best evidence of the existence in terms of  
8 any agreement between the Debtor and these entities.

9 MR. BONDS: Your Honor, I can fix that.

10 THE COURT: Okay.

11 BY MR. BONDS:

12 Q I'm just asking: What is your understanding, Mr. Dondero,  
13 of the shared service agreements between the Debtor and Fund  
14 Advisors?

15 A It's similar to the agreement I mentioned earlier. It  
16 covers a broad range of centralized services historically  
17 provided by Highland, but now those, while still paying  
18 smaller than historic fees, those entities now have been  
19 required to incur the expenses of duplicating those functions.

20 Q Okay. Do you recall the email string dated November 24th  
21 regarding SKY equity that the Debtor talked about?

22 A Yes.

23 Q What did you mean when you sent that email about the  
24 trade? What did you mean, I'm sorry?

25 A I was trying to inform the traders, and once they knew --

1 they weren't willing to do the trades anymore once they knew  
2 that the underlying investors had requested that their  
3 accounts not being traded until the transition be -- until the  
4 transition of the CLOs was effectuated.

5 It's -- it's standard by, you know, statute or  
6 understanding, in the money and management business, when  
7 you're moving accounts from one asset manager to another, and  
8 someone requests that you don't do anything to their account,  
9 you don't trade it whimsically. And so I was -- I was making  
10 sure the traders knew that the underlying investors had  
11 requested that no trades occur in their accounts.

12 And then I believed it was a clear violation of the  
13 Registered Investment Adviser's Act. I believe that people  
14 involved at a senior level or at a compliance level could have  
15 material liability, and could create material liability for  
16 the Debtor. And I think if, as I said before, I think if  
17 anybody on this call were to call the SEC, they would start on  
18 audit on this.

19 MR. MORRIS: Your Honor, I move to strike the first  
20 portion of the answer prior to when he started to describe  
21 what he believes and what he thinks. The first portion of the  
22 answer was devoted to testifying about what is in the  
23 knowledge of the people who he was communicating with.  
24 There's no evidence. Mr. Dondero, of course, was free to call  
25 any witness he wanted. He could have called the chief

1 compliance officer. He could have called the general counsel.  
2 He could have called all the people he's now testifying on  
3 behalf of, and he did not.

4 So I move to strike anything in the record that purports  
5 to reflect or suggest the knowledge on behalf of any party  
6 other than Mr. Dondero.

7 THE COURT: Okay. I'm --

8 MR. BONDS: Let me rephrase -- Your Honor, I'm going  
9 to rephrase the question.

10 THE COURT: Okay. Very well.

11 MR. BONDS: I'm sorry.

12 THE COURT: So the motion to strike is granted. If  
13 you're going to rephrase, go ahead.

14 MR. BONDS: Okay.

15 BY MR. BONDS:

16 Q Mr. Dondero, what did you mean when you said -- that the  
17 emails about the trade?

18 A Okay. I'll give my intention by sending emails to stop  
19 the trade and my basis for those emails. My intentions were  
20 to inform the traders and to inform the compliance people that  
21 I believe there was a trade that wasn't in the best interest  
22 of the employees that had no business purpose for its  
23 occurring. And the people involved weren't aware that the  
24 investors had sent over requests not to trade their accounts  
25 while they were in transition.

1           So I made the traders aware of that. I made compliance  
2 aware of that also. And it's my belief, based on 30 years'  
3 experience in the industry, that it is entirely inappropriate  
4 to trade the accounts of investors that are in transition, and  
5 especially when you're not -- you're not contractually -- you  
6 are contractually in default with that client, to trade their  
7 account whimsically, for no business purpose. And I thought  
8 it was a clear breach of both regulatory, ethical, and  
9 fairness with regard to the investors.

10           So I -- what did you know, when did you know it, what did  
11 you do? I did what I felt was the right thing, which I try  
12 and do every day, and made all the relevant parties aware of  
13 what was going on.

14 Q    Mr. Dondero, do you recall the text message you sent to  
15 Mr. Seery in which you said, "Be careful what you do"?

16 A    Yes.

17 Q    What did you mean by that message?

18 A    It's -- I even said, Last warning. I mean, I -- he's  
19 doing things against the interests of investors. He's  
20 purposely incurring losses by trading in days and weeks and  
21 time of the year, the day before and after Thanksgiving, where  
22 any novice knows the markets are illiquid and anybody who can  
23 read a computer screen can see you get ten percent less --  
24 five or ten percent less than you would the week before or the  
25 week after. And with as much professional umbrage as

1 possible, I was recommending that he stop.

2 Q Did you intend to personally threaten Mr. Seery in any  
3 way?

4 A No. It was bad -- bad intentional professional acts  
5 against the interests of investors that flow through to '40  
6 Act retail mom-and-pop investors. I was trying to prevent  
7 those losses and those bad acts from occurring. And I believe  
8 everybody who's -- everybody around that issue should be  
9 ashamed of themselves, in my opinion.

10 Q Do you now regret sending the text?

11 A No. No, I mean, I could have worded it differently. I  
12 was angry on behalf of the investors.

13 Q And Mr. Dondero, you have management ownership interest in  
14 that entity; is that right?

15 A Yes.

16 Q Do you believe the interests or other entities in which  
17 you are involved are independent from your personal rights in  
18 this case?

19 A Yes.

20 Q And do you believe you caused anyone to violate the TRO?

21 A No. I've been -- I've been very conscious to just try and  
22 champion the thing that -- things that I think are important  
23 and the things that I've been tasked to do, like an attractive  
24 pot plan to help resolve this case. I spend time on that.  
25 But every once in a while, do I have to access, let's say,

1 David Klos, who is the person who put the model together, who  
2 has been working on it for six or nine months, and no one else  
3 S has a copy of? Yes. Yeah, I have to -- I have to access  
4 him. I don't believe that's the -- inappropriate or in any  
5 way violating the spirit of the TRO.

6 I believe settlement in this case is only going to happen  
7 with somebody fostering communication. And Ellington's role,  
8 which I thought was a good one and I thought he was performing  
9 well as settlement counsel, was an important role. And I used  
10 him for things like -- and Seery also used him for things. As  
11 recently as two days before Ellington was fired, Seery gave  
12 him a shared services proposal to negotiate with me.  
13 Ellington has always been the go-between from a settlement and  
14 a legal standpoint. I think his role there was -- it was  
15 valued. To try to honor the TRO was things like Multi-Strat,  
16 that I didn't remember correctly. Ninety percent of the time  
17 or for the last 20 years I would have gone directly to  
18 Accounting and Dave Klos for it, but I purposely went to  
19 settlement counsel in terms of Ellington in order to get the  
20 Multi-Strat information which we needed in order to put the  
21 pot plan together that we went to the Independent Board with  
22 at the end of December.

23 Q (faintly) And do you recall the questions that Debtor's  
24 counsel had regarding the letters sent by K&L Gates to clients  
25 of the Debtor?

1 MR. MORRIS: I'm sorry, Your Honor. I had trouble  
2 hearing that question.

3 THE COURT: Please repeat.

4 MR. BONDS: Sure.

5 BY MR. BONDS:

6 Q Do you recall the questions Debtor's counsel had regarding  
7 the letters sent by K&L Gates to the clients of the Debtor --  
8 to the Debtor?

9 A Yes.

10 Q You testified on direct that the letters were sent to do  
11 the right thing; is that correct?

12 A Yes.

13 Q What did you mean by that?

14 A I don't want to repeat too much of what I just said, but  
15 the Debtor has a contract to manage the CLOs, which in no way  
16 is it not in default of. It doesn't have the staff. It  
17 doesn't have the expertise. Seery has no historic knowledge  
18 on the investments. The investment staff of Highland has been  
19 gutted, with me being gone, with Mark Okada being gone, with  
20 Trey Parker being gone, with John Poglitsch being gone.

21 And there's -- there's a couple analysts that are a year  
22 or two out of school. The overall portfolio is in no way  
23 being understood, managed, or monitored. And for it to be  
24 amateur hour, incurring losses for no business purpose, when  
25 the investors have requested numerous times for their account

1 not to be traded, is crazy to me. Where the investors say, We  
2 just want our account left alone. We just want to keep the  
3 exposure. And Jim Seery decides no, there's -- I'm going to  
4 turn it into cash for no reason. I'm just going to sell your  
5 assets and turn them to cash and incur losses by doing it the  
6 week of Thanksgiving and the week of Christmas. I think it's  
7 -- it's shameful. I'm glad the compliance people and the  
8 general counsel at HFAM and NexPoint saw it the same way. I  
9 didn't edit their letters, proof their letters, tell them how  
10 to craft their letters. They did that themselves, with  
11 regulatory counsel and personal liability. They put forward  
12 those letters.

13 MR. MORRIS: Your Honor (garbled) the testimony that  
14 Mr. Dondero just gave about these people saw it. They're not  
15 here to testify how they saw it. We know that Mr. Dondero  
16 personally saw and approved the letters before they went out.  
17 He can testify what he thinks, what he believes. I have no  
18 problem with that. But there should be no evidence in the  
19 record of what the compliance people thought, believed,  
20 understood, anything like that. It's not right.

21 THE COURT: All right. That's essentially a --

22 MR. BONDS: Your Honor?

23 THE COURT: -- a hearsay objection, I would say, or  
24 lack of personal knowledge, perhaps. Mr. Bonds, what is your  
25 response?

1 MR. BONDS: Your Honor, my response would be that  
2 there are several exhibits the Debtor introduced today that  
3 stand for the proposition that the compliance officers were  
4 concerned. So I think there is ample evidence of that in the  
5 record.

6 THE COURT: I didn't --

7 MR. MORRIS: Your Honor, the letter --

8 THE COURT: I did not understand what you said is in  
9 the record. Say again.

10 MR. BONDS: Your Honor, I'm sorry. The -- there are  
11 -- there are references that are replete in the record that  
12 have to do with the compliance officers' understanding of the  
13 transactions.

14 THE COURT: I don't know what you're referring to.

15 THE WITNESS: Your Honor?

16 THE COURT: I've got a lot of exhibits. You're going  
17 to have to point out what you think --

18 THE WITNESS: Can I -- can I -- can I -- can I answer  
19 for -- that for a second? The letters that were signed by the  
20 compliance people or by the businesspeople at NexPoint and  
21 HFAM objecting to the transactions, those letters were their  
22 beliefs, their researched beliefs. They weren't --

23 THE COURT: Okay.

24 THE WITNESS: -- micromanaged by me. You know, they  
25 weren't -- I agree with them, but those weren't my beliefs

Dondero - Cross

122

1 that they've stated. Those were their own beliefs and their  
2 own research, --

3 THE COURT: All right.

4 THE WITNESS: -- and the record should reflect --

5 THE COURT: This is clearly hearsay. I mean, it's  
6 one thing to have a letter, but to go behind the letter and  
7 say, you know, what the beliefs inherent in the words were is  
8 inadmissible. All right? So I strike that.

9 THE WITNESS: Maybe ask your question again.

10 BY MR. BONDS:

11 Q Yeah. What is your understanding of the rights that these  
12 parties had and what do you believe that was intended to be  
13 conveyed by the compliance officers?

14 MR. MORRIS: Objection. Calls -- calls for Mr.  
15 Dondero to divine the intent of third parties. Hearsay.

16 THE COURT: I sustain.

17 MR. BONDS: Your Honor, --

18 MR. MORRIS: No foundation.

19 MR. BONDS: -- I don't agree. I think that this is  
20 asking Mr. Dondero what he thinks.

21 MR. MORRIS: The letters speak for themselves, Your  
22 Honor.

23 THE COURT: Okay. I sustain --

24 MR. MORRIS: And Mr. --

25 THE COURT: I sustain the objection.

1 MR. MORRIS: All right. Thank you.

2 THE WITNESS: Ask me what I know. Or ask me what my  
3 concerns --

4 BY MR. BONDS:

5 Q Let me ask you this. What were your concerns relating to  
6 the compliance officers' exhibit?

7 A My concerns regarding the transaction, the transactions,  
8 which may repeat what I've said before, but I do want to make  
9 sure it gets in the record. So if we have to make a -- these  
10 were my concerns, whether or not they were the compliance  
11 people's concerns. I believe they were, and I believe they  
12 were similar, but I'm just going to say these are -- these  
13 were my concerns.

14 The Debtor, with its contractual -- with its contract with  
15 the CLOs, were in no way -- was in no way compliant with that  
16 contract or not in default of that contract. Bankruptcy is a  
17 reason for default. Not having the key men specified in the  
18 contract currently employed by the Advisor is a violation.  
19 Not having adequate investment staff to manage the portfolio  
20 is a violation of that contract. Announcing that you're  
21 laying off everybody and will no longer be a registered  
22 investment advisor is proclaiming that you, if you even have  
23 any -- any -- pretend that you're qualified or in compliance  
24 with the contract now, you're broadcasting that you won't be  
25 in three weeks, are -- are all mean that you're not in good

1 standing. Okay? Number one.

2 Number two, when the investors know that it's in  
3 transition, you're not in compliance as a manager, you're not  
4 going to be an RIA in three weeks, the accounts are going to  
5 have to transition to somebody else in three weeks, and the  
6 investors ask you, Please don't trade my accounts between now  
7 and then, that is -- that is a -- if it's not a *per se*, it's  
8 an ethical and a spirit violation of any relationship between  
9 an investor and an asset manager.

10 To then sell assets -- not replace assets, just sell  
11 assets for cash -- and purposely do it on the least liquid  
12 days of the year -- the day before Thanksgiving, the day after  
13 Thanksgiving, the week of Christmas, this past week, whatever  
14 -- to purposely incur losses so that the investors suffer ten  
15 or fifteen percent losses that other -- on each of those sales  
16 that they wouldn't otherwise have to incur, and for no stated  
17 business purpose, for no investment rationale, with no staff  
18 to even say whether the investment is potentially going up or  
19 down, is -- is -- is -- I've never seen anything else like it.

20 And I will stand up and say it every day: I'm glad the  
21 letters went out from HFAM and from NexPoint. I would never  
22 recommend they get retracted. And I believe everybody who  
23 signed those letters meant everything in those letters. And I  
24 believe the letters are correct. And I believe the whole  
25 selling of CLO assets is a travesty.

1 My personal opinion, we need an examiner or somebody here  
2 to look at this junk and look at some of the junk that  
3 occurred earlier this year. This -- this stuff is  
4 unbelievable to me.

5 Q Generally, who holds interests in the CLOs?

6 A A vast majority of the CLOs that we're speaking of that  
7 Seery has been selling the assets of are owned by the two  
8 mutual funds, the two '40 Act -- the two '40 Act mutual funds  
9 and the DAF. Between them, I think out of -- eleven out of  
10 the sixteen CLOs, they own a vast majority, and then I think,  
11 whatever, two or three they own a hundred percent, and I think  
12 two or three they own a significant minority.

13 And just because they don't own a hundred percent doesn't  
14 somehow allow a registered investment advisor to take  
15 advantage of an investor. And I -- I've never understood that  
16 defense. I wouldn't be able -- in my role of 30 years, I  
17 wouldn't be able to tell that to an investor, that, hey, you  
18 had a contract with us, we did something that wasn't in your  
19 best interest, but we got away with it because you didn't own  
20 a hundred percent, you only owned eighty percent.

21 MR. MORRIS: Your Honor, I move to strike. There's  
22 no contract between the Debtor and Mr. Dondero's -- and the  
23 entities that he owns and controls for purposes of the CLO.  
24 The only contract is between the Debtor and the CLOs  
25 themselves.

1 THE COURT: All right. Well, I overrule whatever  
2 objection that is. Again, if you want to bring something out  
3 on cross-examination or through Mr. Seery, you know, you're  
4 entitled to do that.

5 All right. Please continue.

6 BY MR. BONDS:

7 Q Do you believe these letters were sent by the Funds to the  
8 Advisors because they are trying to protect the independent  
9 entities?

10 A They're trying to protect their investors. They were  
11 trying to protect their regulatory liability for activities  
12 they see that are not in the best interests of investors.

13 MR. MORRIS: Objection, Your Honor. I move to  
14 strike. He's again testifying as to the intent of the people  
15 who sent the letters who are not here to testify today.

16 THE COURT: Sustained.

17 BY MR. BONDS:

18 Q Mr. Dondero, what is your belief as to the letters that  
19 were sent by the Funds and Advisor? Is -- are they trying to  
20 protect their independent interests?

21 MR. MORRIS: Objection, Your Honor. Asked and  
22 answered.

23 THE COURT: Sustained.

24 THE WITNESS: Ask me --

25 BY MR. BONDS:

1 Q What is your understanding of why the letters were sent?

2 MR. MORRIS: Objection, Your Honor. Asked and  
3 answered.

4 THE COURT: Sustained.

5 BY MR. BONDS:

6 Q Mr. Dondero, would you have sent the letters?

7 A I would have sent the letters exactly or very similar or  
8 probably even more strongly than the letters were stated, for  
9 the purposes of protecting investors, to protecting mom-and-  
10 pop mutual fund investors from incurring unnecessary losses by  
11 an entity that was no longer in compliance with their -- with  
12 their asset management contract and because the investors had  
13 requested that their account just be frozen until it was  
14 transitioned.

15 That's why I would have sent the letter. That's why I  
16 believe the letter should be sent. That's why I'm happy they  
17 were sent. That's why we've never retracted.

18 Q Mr. Dondero, who is Jason Rothstein?

19 THE COURT: I did not hear the question.

20 THE WITNESS: Jason -- Jason --

21 MR. BONDS: Who --

22 THE COURT: Please repeat.

23 MR. BONDS: Yes. I asked Mr. Dondero who Jason  
24 Rothstein was.

25 THE WITNESS: Jason Rothstein heads up our systems

1 department at Highland Capital.

2 BY MR. BONDS:

3 Q Can you explain what your text message to Mr. Rothstein  
4 was about?

5 A Which text message? The one where it was in the drawer?

6 Q Yeah.

7 A Uh, --

8 Q And that was actually from him, not you.

9 A Yeah. That was from him. I think he transferred icons or  
10 set up personal stuff to the new phone, and he was just saying  
11 that the old phone was in Tara's drawer.

12 Q And you don't know whether -- what's happened to the  
13 phones, do you?

14 A No. Like I said, I believe they've been destroyed, but I  
15 -- I can find out. I mean, I can query and find out who  
16 destroyed it, if that's important.

17 Q And you understood that you were not supposed to talk to  
18 the Debtor's employees; is that correct?

19 A Like I said, except for my roles regarding shared  
20 services, the pot plan, and trying to reach some type of  
21 settlement, I've had painfully few conversations with the  
22 Debtor's employees.

23 Q When you talked to certain employees, did you think it was  
24 an -- under an exception to the TRO, like shared services,  
25 related to the pot plan, or settlement communications?

1 A Yes.

2 MR. MORRIS: Your Honor, I move to strike. Mr.  
3 Dondero never read the TRO. He's got no basis to say what the  
4 TRO required and didn't require.

5 MR. BONDS: That wasn't the -- that wasn't the  
6 question.

7 THE COURT: Okay.

8 MR. BONDS: I'm sorry.

9 THE COURT: Okay. Rephrase the question, please.

10 MR. BONDS: Okay. I'm sorry.

11 BY MR. BONDS:

12 Q When you talked to these -- to certain employees, did you  
13 think it was under an exception to the TRO, like shared  
14 services, relating to the pot plan, or settlement  
15 communications?

16 A Yes. Absolutely.

17 MR. MORRIS: I object. No foundation.

18 THE COURT: Sustained.

19 BY MR. BONDS:

20 Q Mr. Dondero, do you understand -- did your lawyers explain  
21 to you the TRO?

22 A Yes.

23 Q And who was the lawyer that explained the TRO to you?

24 MR. MORRIS: Your Honor, I don't know if we're  
25 getting into a waiver of privilege, but I just want to tell

1 you that my antenna are up very high.

2 THE COURT: Okay. Mine are as well, Mr. Bonds. Are  
3 you about to waive the privilege?

4 MR. BONDS: No, Your Honor, I am not.

5 THE COURT: Okay. Well, it sounded like perhaps we  
6 were about to have the witness testify about conversations he  
7 had with lawyers.

8 MR. BONDS: I'm sorry, Your Honor. That was not my  
9 intention. Again, I'm asking Mr. Dondero to explain for us  
10 his contact with -- or, his impression of the TRO.

11 BY MR. BONDS:

12 Q What did the TRO mean to you?

13 A The TRO meant to me that I was precluded from talking to  
14 Highland employees -- which, again, very few, if any, were  
15 coming into the office. I was not talking to Highland  
16 employees with any regularity anyway. But there was an  
17 exception with regard to Scott Ellington regard -- Scott  
18 Ellington in terms of him functioning as settlement attorney  
19 to try and bridge the U.C.C., the Independent Board, Jim  
20 Seery, other people, and things that impacted me or other  
21 entities.

22 I also viewed that there was an exception for the pot  
23 plan, which had been presented and gone over as recently as  
24 December 18th and 20th. And -- or December 18th, I think, was  
25 the date.

1 And you know what, I want to clarify a characterization of  
2 the pot plan. I still believe it's the best and most likely  
3 alternative for this estate in the long run. I think what  
4 we've proposed numerous times is more generous than what  
5 anyone will receive in a liquidation and in a more timely  
6 fashion.

7 And the last time we presented it to the Independent  
8 Board, the Independent Board thought it was attractive and  
9 thought we should go forward with it to the U.C.C. and other  
10 parties.

11 MR. MORRIS: Your Honor, I move to strike the last  
12 portion of the answer that purports to describe what the  
13 Independent Board thought.

14 THE COURT: Well, --

15 MR. MORRIS: No foundation. Hearsay.

16 THE COURT: What is your response to the hearsay  
17 objection, Mr. Bonds?

18 MR. BONDS: Your Honor, I don't have one.

19 THE COURT: Okay. I sustain.

20 BY MR. BONDS:

21 Q What exceptions did you believe there were for  
22 communications with employees?

23 A Okay. Thank you. Yeah. Like I said, I covered Scott  
24 Ellington and settlement counsel. I covered the pot plan.

25 Q Okay.

1 A My -- my view of the pot plan as -- my view of the pot  
2 plan was that it was very attractive, and I had received  
3 encouragement to go forward with it as something that should  
4 be workable. That's my testimony on that.

5 And then -- and we talk about negotiating shared services.  
6 So, there's shared services in terms of overlap in  
7 functionality, but there's also, in terms of negotiating the  
8 shared services agreement, which, as I said, was something  
9 that Ellington was put in charge of three or four days ago by  
10 Jim Seery to negotiate with us. And he reached out to me to  
11 negotiate it. And I think the Pachulski deadline on it was  
12 three days later. That whole process was something that I  
13 viewed as separate from the TRO, especially since it was  
14 initiated by Jim Seery, DSI, et cetera, and consistent with  
15 what Scott Ellington's role had been for the last six, nine  
16 months.

17 Q As to the Debtor's request that you vacate the office  
18 space, did you comply with this request?

19 A Yes.

20 Q What did you think that vacating meant?

21 A I moved out all my -- my personal items to a new office at  
22 NexBank.

23 Q (faintly) And, in fact, did you work on the last day over  
24 to 3:00 a.m.?

25 A Yes. 4:00.

1 THE COURT: Mr. Bonds, I didn't hear your question.  
2 I didn't hear your question.

3 MR. BONDS: Okay. I'm sorry.

4 BY MR. BONDS:

5 Q Did -- isn't it true that you worked through the night, to  
6 3:00 or 4:00 a.m., to vacate the premises?

7 A Yes. Until 4:00 a.m. on the last day, to organize and  
8 pack up all my stuff, yes.

9 Q Did you think your presence in the office, with no other  
10 employees there, violated the spirit of the TRO?

11 A No. I thought it was over the top and meant to tweak me,  
12 but, yeah, there's no -- there's not Debtor employees coming  
13 in since COVID.

14 Q (faintly) Okay. And you thought you could talk to Mr.  
15 Ellington and -- as settlement counsel; is that correct?

16 MR. MORRIS: I'm having trouble hearing it, Your  
17 Honor.

18 THE WITNESS: Yes.

19 THE COURT: Yeah. We're -- Mr. Bonds, please make  
20 sure you speak into the device.

21 MR. BONDS: I'm sorry. I'll try to get closer.  
22 Okay. I asked the Debtor -- or I, excuse me, I asked Mr.  
23 Dondero if he thought he could talk to Ellington as a go-  
24 between or settlement counsel. And I asked him if that was  
25 correct.

1 THE WITNESS: Yes. For settlement, shared services,  
2 the pot plan. Nothing that interrupts or affects the Debtor,  
3 but for those purposes, as has consistently occurred for the  
4 last six months.

5 BY MR. BONDS:

6 Q Okay. And you saw the texts and emails presented by the  
7 Debtor between you and Mr. Leventon; is that correct?

8 A The one regarding Multi-Strat?

9 Q Yes.

10 A Yes.

11 Q In your understanding, did you believe those  
12 communications were allowed under the TRO?

13 A Well, yes. And, again, to clarify my -- my contrasting  
14 testimony, I would never typically have gone to them for that  
15 kind of information, but to be compliant with the TRO, for  
16 Multi-Strat information, which I needed in order to put  
17 together the pot plan that the Independent Board audienced on  
18 December 18, I needed the information on Multi-Strat, and I  
19 requested it as appropriate through settlement counsel  
20 Ellington. And I think Ellington requested it from Isaac, who  
21 requested it from David Klos.

22 The whole purpose, I believe -- my belief is the whole  
23 purpose of this TRO is to make it impossible for us to get  
24 information to come up with alternatives other than a -- the  
25 plan proposed by Jim Seery. It's our -- if -- if -- without

1 Ellington in the go-between, which he's now no longer an  
2 employee, I assume the only way we get any information,  
3 balance sheet or anything from Highland Capital, is with a  
4 subpoena.

5 And as much as I've tried to engage or make an attractive  
6 pot plan for everybody, each one of them has been a complete  
7 shot in the dark, without even knowing the assets and  
8 liabilities of Highland, but just estimating where they were  
9 or were likely to be.

10 Q Do you believe your text message with Leventon caused any  
11 harm to the Debtor's business?

12 A No. It potentially fostered a pot plan, because, you have  
13 to know, the pot plan needed -- one of the aspects of the pot  
14 plan was the --

15 Q Do you still want to advocate for your pot plan?

16 A I think that's eventually where we ultimately end up. Or  
17 -- or should end up. Otherwise, I fear it's going to be an  
18 extended, drawn-out process.

19 Q And how much did you initially propose to pay creditors in  
20 this case?

21 A The most recent -- the most recent pot plan?

22 Q No. The -- initially.

23 A The initial pot plan, I believe, was \$160 million.

24 Q And what about the notes?

25 A There was \$90 [million] of cash and I believe \$70

1 [million] of notes.

2 Q And what is Multi-Strat?

3 A Multi-Strat is a fund that's managed by Highland. They  
4 used to have \$40 or \$50 million in value. It used to contain  
5 a lot of life settlement policies. And I believe now has \$5  
6 or \$6 million of value, after assets have been sold.

7 Q Do you recall the email Debtor's counsel presented  
8 regarding the balance sheet today?

9 A The balance sheet of Multi-Strat?

10 Q Correct.

11 A Yes.

12 Q Do you believe you were entitled to see that document?

13 A Yes. It's just -- again, for the pot plan, I needed it.  
14 But also I'm an investor in that fund and I'm entitled to it.  
15 It's -- there was nothing in there that was improper or  
16 untoward or in any way damaged the Debtor.

17 Q And you recall the request for documents sent by the  
18 Debtor; is that correct?

19 A On my -- my personal estate plan?

20 Q No, on Multi-Strat.

21 A The Debtor's request on -- I'm sorry. What was that?

22 Q The Debtor sent you a request for Multi-Strat. For Duga  
23 -- I'm sorry.

24 A For Dugaboy? Okay.

25 Q Dugaboy.

1 A Yeah. There's -- there's personal estate planning trusts.  
2 Some are active. Some are inactive. Some have been around  
3 for 15 years. But they're -- they're not assets or anything  
4 that's related to the estate. And that was -- that was my  
5 text to Melissa that said, you know, Not without a subpoena.

6 Q Mr. Dondero, if you remember back on Exhibit K, there was  
7 some request that you terminate your offices at the Crescent,  
8 and I think you were given seven days' notice to do that. Do  
9 you know if Christmas occurred during that time?

10 A I believe it did.

11 Q So, if Christmas and Christmas Eve are both holidays, how  
12 many days, business days, did they give you to terminate or to  
13 get out of the space?

14 A There would have been three business days. It was Monday  
15 through Wednesday that I moved out.

16 MR. BONDS: Your Honor, I'll pass the witness.

17 THE COURT: All right. Mr. Morris?

18 THE WITNESS: Take a break. I hope.

19 MR. BONDS: Your Honor, I'm sorry, can I take a ten-  
20 minute break? I think that I'm going to be through, but I  
21 don't know.

22 THE COURT: All right. I'll give you a ten-minute  
23 break.

24 MR. BONDS: All right. Thank you, Your Honor.

25 THE COURT: We're coming back at 2:15.

1 THE CLERK: All rise.

2 (A recess ensued from 2:06 p.m. until 2:16 p.m.)

3 THE CLERK: All rise.

4 THE COURT: All right. Please be seated. We're back  
5 on the record in Highland versus Dondero. Mr. Bonds, do you  
6 have more examination?

7 MR. BONDS: Your Honor, I have one question.

8 THE COURT: Okay.

9 MR. BONDS: And that's --

10 MR. LYNN: And one more witness.

11 MR. BONDS: And one more witness.

12 CROSS-EXAMINATION, RESUMED

13 BY MR. BONDS:

14 Q Do you think that Scott Ellington and Isaac Leventon were  
15 treated appropriately by the Debtor?

16 A No, I do not. I don't think they've been treated fairly,  
17 nor do I think other senior employees have been treated  
18 fairly. I've never seen a bankruptcy like this where, during  
19 complex unwinding of 20 years of various different entities  
20 and structures, relying on the staff, working them hard,  
21 working overtime, a lot of investment professionals like  
22 lawyers and DSI just putting their name on the work of stuff  
23 that was done by internal employees, getting to the end of the  
24 year, trying to pay people zero bonuses and retract prior  
25 years' bonuses, and try and come up with legal charges against

1 those people is unusual to this case and my experience, in the  
2 bankruptcies we've been involved in, where typically  
3 management teams get paid multiples of current salary to stay  
4 on and be the experts.

5 I also think they were put in difficult spots from the  
6 very beginning. It was Jim Seery that made Scott Ellington  
7 the settlement counsel six, seven months ago. It was a  
8 broadly-defined role that was never retracted, never adjusted,  
9 never modified, yet somehow he and Isaac violated it. I don't  
10 know. I haven't spoken to them since they've been terminated.  
11 They aren't allowed to speak to me, from what I hear. But I  
12 wish them luck in their claims.

13 THE COURT: Okay. You pass the witness?

14 MR. BONDS: Yes, Your Honor.

15 THE COURT: All right. Mr. Morris, do you have  
16 further examination?

17 MR. MORRIS: Just a few questions.

18 REDIRECT EXAMINATION

19 BY MR. BONDS:

20 Q Mr. Dondero, you knew about this hearing for some time,  
21 right?

22 A No.

23 Q When did you first learn this hearing was going to take  
24 place?

25 A Two days ago.

1 Q Two days ago?

2 A When was the depo, three days ago? Whatever.

3 Q And you didn't know prior to the deposition that we would  
4 be having a hearing today on the Debtor's motion for a  
5 preliminary injunction?

6 A No. I thought it was going to be postponed or canceled.  
7 I was waiting for the text last night.

8 Q You had an opportunity to call any witness in the world  
9 you wanted to today, right?

10 A I guess.

11 Q You could have called -- you could have called the chief  
12 compliance officer at the Advisors if you thought the Court  
13 should hear from him as to the compliance issues that you've  
14 testified to, right?

15 A I think their letters stand on their own.

16 Q Okay. So you didn't think that it was important for the  
17 Court to hear from Mr. Sowin directly, correct?

18 A Sowin is a trader.

19 Q I'm sorry. Who's the chief compliance officer of the  
20 Advisors?

21 A Jason Post, as far as NexPoint is concerned. He's the one  
22 that would have been behind the K&L -- K&L letters.

23 Q And he is not here today to testify, right?

24 A I think his letters stand on their own and I think  
25 everybody should read them, make sure they read them.

1 Q Okay. But Mr. Post is not here to answer any questions;  
2 is that right?

3 A I don't know if there are any questions beyond what's  
4 obviously stated in the letters. You should read the letters  
5 carefully. They're -- they're -- they talk about clear  
6 violations.

7 MR. MORRIS: Your Honor, I move to strike. It's a  
8 very simple question.

9 THE COURT: Sustained. That was another yes or no  
10 answer, Mr. Dondero. Go ahead.

11 THE WITNESS: I'm sorry.

12 BY MR. MORRIS:

13 Q Mr. Dondero, Mr. Post is not here to testify in order to  
14 explain to the Court what he thinks the regulatory issues are,  
15 correct?

16 A He's not here today.

17 Q And you could have called him as a witness, correct?

18 A Yes.

19 Q And you thought Mr. Ellington and Mr. Leventon were  
20 treated unfairly, right?

21 A Yes.

22 Q And there's no reason why they couldn't have come today to  
23 testify, correct?

24 A I guess they could have.

25 Q And there's no reason why anybody on behalf of the K&L

1 Gates clients couldn't have been here to testify, correct?

2 A I didn't deem it necessary, I guess.

3 Q Okay. You could have offered into evidence, at least  
4 offered into evidence, any document you wanted, right?

5 A Yes.

6 Q And you could have offered the judge, for example, the  
7 shared services agreement, the shared services agreements for  
8 which you gave the Court your understanding, right?

9 A Which shared services, the one that Seery gave Ellington  
10 three days ago or the original one from years ago?

11 Q Any of the ones -- any of the ones that you have referred  
12 to today. You could have given any of them to the judge,  
13 right?

14 A Correct.

15 Q And you didn't, right?

16 A I did not.

17 Q In fact, there's not a single piece of evidence in the  
18 record that corroborates anything you say; isn't that right?

19 A I -- I believe all those documents are in the record.  
20 They're just not in the record of this TRO. But they're all  
21 --

22 Q Oh.

23 A They're all in the record.

24 Q Do you remember that there was a hearing on December 16th?  
25 I think you -- you testified that you're fully aware of that

1 hearing that was brought by the K&L Gates Clients. Do you  
2 remember that?

3 A Yes.

4 Q Who testified at that hearing on behalf of the K&L Gates  
5 Clients? Dustin Norris?

6 A I believe -- I believe Dustin Norris testified.

7 Q Uh-huh. And what's Mr. Norris's role at the Advisors?

8 A He's one of the senior managers.

9 Q Is he a compliance officer?

10 A No.

11 Q Is he a trader?

12 A No. But he's one of the senior managers.

13 Q Okay. They could have called anybody they wanted, to the  
14 best of your understanding, right?

15 A I don't think they got a chance to. Wasn't it an  
16 abbreviated hearing?

17 Q They offered Mr. Norris as a witness. Do you understand  
18 that?

19 A I -- all I -- I wasn't there. I didn't attend virtually.  
20 I -- but I did know that Norris testified. But I don't know  
21 who else was called, wasn't called, was going to be called,  
22 was on the witness list. I have no awareness.

23 Q Okay. You were pretty critical of the trades that Mr.  
24 Seery wanted to make that you interfered to stop, right?

25 A I think he's subsequently done most of those trades.

1 Q And you called them preposterous because he wanted to do  
2 it around Thanksgiving or around Christmas, at least based on  
3 your testimony, correct?

4 A That's when it did occur.

5 Q And is it your testimony -- is it your testimony that  
6 every single person in the world who trades securities near a  
7 holiday is making a preposterous trade?

8 A I think it's amateur and not what an investment  
9 professional would do.

10 Q So you never trade on holidays; is that your testimony?  
11 You've never done it once in your life?

12 A Very rarely, unless there's another overriding reason.  
13 And there was no overriding reasons, period.

14 Q How would you know that when you didn't even ask Mr. Seery  
15 why he wanted to make the trades?

16 A I asked Joe Sowin, who asked Jim Seery. And Joe Sowin  
17 said that Jim Seery just said for risk reduction.

18 MR. MORRIS: I move to strike on the grounds that  
19 it's hearsay, Your Honor.

20 THE COURT: Sustained.

21 BY MR. MORRIS:

22 Q You never asked Mr. Seery why he wanted to make the  
23 trades, correct?

24 A I'm not allowed to talk to Mr. Seery.

25 Q You certainly were around Thanksgiving; isn't that right?

1 A I don't know.

2 Q There was no TRO in place at that time, correct?

3 A That's true.

4 Q You're pretty critical of Mr. Seery and his capabilities;  
5 is that right?

6 A He's a lawyer. He's not an investment professional.

7 Q Did you object to his appointment as the CEO of the  
8 Debtor?

9 A No.

10 Q Have you made any motion to the Court to have him removed  
11 as unqualified?

12 A Not yet.

13 Q Okay. But with all the knowledge of all the preposterous  
14 things that he's been doing for months now, you haven't done  
15 it, right?

16 A No.

17 Q When you -- when -- before you threw the phone in the  
18 garbage, did you back it up?

19 A No.

20 Q Did it occur to you that maybe you should save the data?

21 A No.

22 Q You said that the only way you think you might be able to  
23 get information going forward is through a subpoena. Do I  
24 have that right?

25 A I mean, that's how it seems. I mean, it seems at every

1 turn -- and now with Scott Ellington being gone and Isaac  
2 being gone -- I have no idea how the Debtor is ever going to  
3 defend against UBS.

4 THE COURT: I did not --

5 THE WITNESS: I have no idea how --

6 THE COURT: I didn't hear the answer after with  
7 Ellington and Leventon being gone. I didn't hear the rest of  
8 the answer. Could you repeat?

9 THE WITNESS: I said I have no idea how the Debtor is  
10 ever going to defend itself against UBS. But I also have no  
11 idea how we're ever going to get any information or ever push  
12 forward any kind of settlement without having any access to  
13 information or anybody to talk to.

14 BY MR. MORRIS:

15 Q Do you trust Judge Lynn?

16 (Echoing.)

17 A Yes.

18 Q Is he a good advocate?

19 A Yes. If anybody returns his phone calls.

20 Q Do you recall that on October 24th Judge Lynn specifically  
21 asked my law firm to provide information on your behalf in  
22 connection with the Debtor's financial information, their  
23 assets and their liabilities?

24 A Yes.

25 Q Do you recall that the Debtor simply asked that you

1 acknowledge in an email between and among counsel that you  
2 would abide by the confidentiality agreement that was entered  
3 by the Court?

4 A I wasn't involved in those details.

5 Q Didn't you send an email in which you agreed to receive  
6 the financial information subject to the protective order that  
7 this Court entered?

8 A I'm sure I would. I just don't remember.

9 Q That was a condition that the Debtors made. That doesn't  
10 refresh your recollection?

11 A I'm not denying it. I just don't remember, and --

12 Q Okay. And --

13 A (overspoken)

14 Q I'm sorry, I don't mean to cut you off. And in fact, on  
15 December 30th, the day you were supposed to vacate the office,  
16 the Debtor voluntarily provided to Judge Lynn all of the  
17 information that had been requested on your behalf without the  
18 need for a subpoena, right?

19 A Yeah. It took a week. It's 40,000 pages of mixed  
20 gobbledygook that we're -- we're going through. But it should  
21 provide enough information for us to negotiate a pot plan if  
22 anybody so chose.

23 Q So you didn't need to (echoing) the 40,000 pages of  
24 financial information from the Debtor; all you needed was an  
25 agreement that you would abide by the protective order.

1 Correct?

2 A I think that was the first thing that was ever produced on  
3 request that I can remember. But yes.

4 Q And it was just a week ago, right?

5 A Yes.

6 MR. MORRIS: I have no further questions, Your Honor.

7 THE COURT: All right. Mr. Bonds, do you have  
8 anything else?

9 MR. BONDS: I do not, Your Honor, as to this witness.  
10 I have one other witness.

11 THE COURT: All right.

12 MR. MORRIS: Your Honor, I don't know who they plan  
13 on calling, but he's not on the witness list.

14 THE COURT: All right. Well, --

15 MR. BONDS: Your Honor, this other witness --

16 THE COURT: Just a moment. This concludes, for the  
17 record, Mr. Dondero's testimony. But, obviously, stick  
18 around, because we're going to have a lot to talk about when  
19 this is finished as far as the evidence.

20 All right. Now, who are you wanting to call that you did  
21 not identify?

22 MR. BONDS: I'd like to call Mike Lynn for the  
23 purpose -- or, to -- as a rebuttal witness.

24 THE COURT: Lawyer as witness?

25 MR. MORRIS: Your Honor?

1 THE COURT: Well, you know, first off, rebuttal of  
2 what? Rebuttal --

3 MR. MORRIS: Exactly. He's going to rebut his own  
4 client, Your Honor? He's going to rebut his own client?  
5 There's only been one witness to testify here. He was on  
6 their exhibit list. How do they call a witness to rebut their  
7 own client?

8 THE COURT: Yes. What -- I don't --

9 MR. BONDS: Your Honor?

10 THE COURT: Go ahead.

11 MR. BONDS: Mr. Morris testified or attempted to  
12 testify that the pot plan didn't gain any traction. We will  
13 submit Mike Lynn on that issue.

14 THE COURT: No.

15 MR. MORRIS: Your Honor?

16 THE COURT: I'm not going to allow a lawyer to  
17 testify to rebut lawyer argument. That's very inappropriate,  
18 in my view. So, not going to happen.

19 MR. LYNN: (garbled)

20 MR. BONDS: Your Honor, he would be a fact witness to  
21 discussions with the other side.

22 MR. MORRIS: Your Honor, I strenuously object.  
23 They're -- he's only rebutting -- my questions are not  
24 evidence. The only evidence in the record is Mr. Dondero's  
25 testimony. Mr. Dondero is their client. Mr. Dondero was on

1 their witness list. They should not be permitted to call any  
2 witness, with all due respect to Mr. Lynn, to rebut their own  
3 witness.

4 THE COURT: All right.

5 MR. BONDS: Your Honor, we're not rebutting our  
6 witness. We are rebutting the testimony that Mr. Morris gave.

7 THE COURT: Mr. Morris is a lawyer. He makes  
8 argument. He asks questions. He was not a witness today.  
9 Okay?

10 So if you want to say whatever you want to say as lawyers  
11 in closing arguments, then obviously you can do that. But I'm  
12 not going to allow a lawyer to be a witness to rebut something  
13 another lawyer said in argument or in a question. I -- it's  
14 -- so, I disallow that.

15 Anything else, then?

16 MR. BONDS: No.

17 THE COURT: Okay. And while we're talking about  
18 procedure, actually, Mr. Morris, it's the Debtor's motion, and  
19 I'm not even sure that's all of your evidence. So, do you  
20 have any more evidence as Movant?

21 MR. MORRIS: No, Your Honor. The Plaintiff and the  
22 Debtor rest.

23 THE COURT: All right. So, at the risk of repeating,  
24 now that the Movant has rested, it would be Mr. Dondero's  
25 chance to put on supplemental evidence. But what I'm hearing

1 from Mr. Morris is there were no witnesses identified on your  
2 witness list?

3 MR. BONDS: Other than Mr. Dondero, Your Honor.

4 THE COURT: Okay. All right. Well, was there any  
5 stipulated documentary evidence that -- that you had --

6 MR. BONDS: No, Your Honor.

7 THE COURT: All right. Well, I guess we're done with  
8 evidence.

9 Mr. Morris, your closing argument?

10 MR. MORRIS: All right. Before I get to that, Your  
11 Honor, I just want to make a very brief statement. When the  
12 Debtor objected to Mr. Dondero's emergency motion for a  
13 protective order, the Debtor stated that it sought discovery  
14 from Mr. Dondero to determine whether Mr. Dondero may have  
15 violated the TRO by interfering and impeding the Debtor's  
16 business, including by potentially colluding with UBS. After  
17 that motion was decided, both Mr. Dondero and UBS produced  
18 documents to the Debtor.

19 Based on the review of that information, the Debtor found  
20 no evidence that Mr. Dondero and UBS colluded to purchase  
21 redeemed limited partnership interests of Multi-Strat, nor any  
22 inappropriate conduct by UBS or its counsel.

23 The Debtor appreciates the opportunity to clear that part  
24 of the record.

25 THE COURT: All right.

1 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

2 MR. MORRIS: Now, with respect to the motion at hand  
3 today, Your Honor, I want to take you back just about a month  
4 ago to December 10th, 2020. At that time, we had a hearing on  
5 the Debtor's motion for a TRO. The motion had been filed in  
6 advance. Mr. Dondero had filed an objection. He had concerns  
7 about the scope and the language of the terms of the proposed  
8 TRO.

9 And at that hearing, Your Honor, if you'll recall, you  
10 listened carefully to the arguments that were made on behalf  
11 of Mr. Dondero. You heard carefully -- you listened carefully  
12 to the proposed changes that he sought to make. And you went  
13 through that proposed TRO word by word, Paragraph 2 and 3, and  
14 you read them out loud, and you made decisions at that time as  
15 to whether the Court believed any portion of that was  
16 ambiguous or whether it was clear. You made determinations at  
17 that time whether or not the provisions were reasonable.

18 Mr. Dondero wasn't there. He didn't read the transcript.  
19 He has no idea what you said. But his lawyers were there, and  
20 they had an opportunity to object and they had an opportunity  
21 to make comments, and the order is what the order is. And for  
22 whatever reason, Mr. Dondero chose not to read it, or,  
23 frankly, even understand it, based on his testimony.

24 The fact is, Your Honor, the one thing that the evidence  
25 shows very clearly here is that Mr. Dondero thinks that he is

1 the judge. He believes that he is the decider. He believes  
2 that he decides what the TRO means, even though he never read  
3 it. He believes that he decides what exceptions exist in the  
4 TRO, even though he never read it.

5 He believes that he decides that it's okay to ditch the  
6 Debtor's cell phone without even seeking, let alone obtaining,  
7 the Debtor's consent. I guess he decides that he can ditch  
8 the phone and trash it without seeking to back it up or  
9 informing the Debtor.

10 Mr. Dondero believes that he gets to decide that it's okay  
11 to take a deposition from the Debtor's office, even when the  
12 Debtor specifically says you're evicted and you're not allowed  
13 to have access.

14 Mr. Dondero believes that he gets to decide that Mr. Seery  
15 has no justification for making trades, even though he  
16 couldn't take the time to pick up the phone or otherwise  
17 inquire as to why Mr. Seery wanted to do that.

18 Mr. Seery -- Mr. Dondero believes that he is the arbiter  
19 and the decision-maker and gets to decide to stop trades,  
20 notwithstanding the TRO, notwithstanding the CLO agreements  
21 that he is not a party to, that his entities are not a party  
22 to.

23 Mr. Dondero thinks that he gets to decide that the Debtor  
24 has breached the agreements with the CLOs. He gets to decide  
25 that the Debtor is in default under those agreements. He gets

1 to decide that it's perfectly fine for Ellington and Leventon  
2 to support his interests while they have obvious duties of  
3 loyalty to the Debtor.

4 It is not right, Your Honor. It is not right. I stood  
5 here, I sat here, about four hours ago, five hours ago, and  
6 told the Court what the evidence was going to show, and it  
7 showed every single thing that I expected it to show and  
8 everything I just described for the Court about Mr. Dondero's  
9 belief that he's the decider.

10 He's not the decider, Your Honor. You are. And you made  
11 a decision on June -- on December 10th that he ignored.

12 There is ample evidence in the record to support the  
13 imposition of a preliminary injunction. And Your Honor, I'm  
14 putting everybody on notice now that we're amending our  
15 complaint momentarily to add all of the post-petition parties,  
16 because this has to stop. The threats have to stop. The  
17 interference has to stop. Mr. Dondero can always make a  
18 proposal if he thinks that there's something that will capture  
19 the imagination and the approval -- more importantly, the  
20 approval -- of the Debtor's creditors. We have no interest in  
21 stopping him from doing that. He's got very able and  
22 honorable counsel, and he can go to them and through them any  
23 time he wants.

24 But the record is crystal clear here that, notwithstanding  
25 Your Honor's order, one entered after serious deliberation, is

1 of no meaning to him. And we'll be back at the Court's  
2 convenience on the Debtor's motion to hold him in contempt.  
3 It'll just be a repeat of what we've heard today, because,  
4 frankly, the evidence is exactly the same.

5 With that, Your Honor, unless you have any questions, the  
6 Debtor rests.

7 THE COURT: All right. I do not.

8 Mr. Bonds?

9 MR. BONDS: Your Honor, we would like to divide our  
10 time between Mike Lynn and myself. Is that a problem?

11 THE COURT: That's fine. Go ahead.

12 MR. LYNN: Are we on mute?

13 MR. BONDS: No.

14 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

15 MR. LYNN: Your Honor, I'm taking a leaf out of Mr.  
16 Phelan's book. I happened to read the confirmation hearing in  
17 the *Acis* case regarding what was referred to as Clients A, B,  
18 and C. And Mr. Phelan, who testified, really gave an oral  
19 argument to the Court which was very persuasive and very  
20 thorough. So I'm going to sort of do the reverse, because I  
21 hope that the Court would find useful some information  
22 regarding the pot plan about which you've heard many words  
23 spoken but very little to do with what that plan was or how it  
24 came about.

25 The pot plan was proposed by Mr. Dondero for the first

1 time in September of 2020, shortly after the conclusion of the  
2 first round of mediations. Though there had been versions of  
3 it before, and lesser versions, the pot plan was finally in  
4 the form that would more or less survive it in September.  
5 Under the pot plan, Mr. Dondero proposed to come up with \$90  
6 million of cash and \$70 million in promissory notes, and that  
7 was to form a pot which creditors would share in.

8 The proposal was provided to the Debtor and then shared  
9 with the Committee. Mr. Seery responded with a degree, a  
10 degree only, of enthusiasm to the pot plan, and indeed  
11 provided a counter-term sheet to the pot plan. He also, so he  
12 said, and I believe him, approached the Committee and said  
13 this is a proposal to be taken seriously.

14 He proposed some improvements in his view to the pot plan.  
15 No response was received from the Creditors' Committee at that  
16 time.

17 After going back and forth with the Debtor -- and Mr.  
18 Seery, not unreasonably, was unwilling to propose the pot plan  
19 without some support on the Creditors' Committee -- I  
20 contacted Matt Clemente. We had a nice conversation. And at  
21 that time, Mr. Clemente raised two particular concerns. The  
22 \$160 million, which creditors did not think was enough, was  
23 not enough, in part, because that included no consideration  
24 for the acquisition of promissory notes executed some by Mr.  
25 Dondero and some by entities controlled by Mr. Dondero, which

1 notes total approximately \$90 million.

2 The second concern was that Mr. Dondero would get a  
3 release under the plan. During that call, I said the issue of  
4 the notes is subject to negotiation and might well result in a  
5 transfer of those notes, possibly with some amendments, to the  
6 pot, and that Mr. Dondero was prepared, in all likelihood, to  
7 forego a release.

8 Mr. Clemente agreed to get back to me. He did. And he  
9 said to me, I have talked to the Committee about this and they  
10 would like you to go to or they want you to go first to Mr.  
11 Seery, work off of his revised timesheet -- or term sheet,  
12 sorry -- and after you have reached an agreement with him,  
13 come to us, come to the Committee, and we'll negotiate with  
14 you.

15 Now, I might have agreed that that was a reasonable  
16 approach if there were a possibility that Mr. Seery would  
17 propose a plan without the agreement of creditors. But the  
18 way I took it was that the Committee was saying go make a deal  
19 with Seery and then we'll start negotiating, and we know,  
20 correctly, that Mr. Seery will not propose a plan that does  
21 not have our support.

22 So, effectively, we get to go through two rounds of  
23 negotiations, even though effectively everything that is in  
24 the estate, everything -- causes of action against Mr.  
25 Dondero, promissory notes from Mr. Dondero -- everything that

1 they would get under a plan or under a liquidation, they would  
2 get under the pot plan.

3 Now, I wanted you to know that, Your Honor, not because  
4 I'm now trying to get you or anyone else to sell the pot plan.  
5 But I think it's important that Your Honor know that Mr.  
6 Dondero's approach in this case has not been a hostile  
7 approach.

8 I know the Court had what it found to be an unsatisfactory  
9 experience with Mr. Dondero in the *Acis* case. But from the  
10 time I became involved in this case and Mr. Bonds became  
11 involved, we have been quiet, we have said nothing, and we've  
12 done virtually nothing in the case, up until the time after  
13 the mediation, when negotiations regarding a pot plan broke  
14 down.

15 Since that time, regrettably, there has been a good deal  
16 of hostility, and it's spreading. I would like to see it stop  
17 spreading. I will do what I can to make it stop spreading.  
18 But I need others to help me on that. And it's my hope that I  
19 can count on the Pachulski law firm, the Sidley law firm, and  
20 the firms representing the major creditors to help make that  
21 happen.

22 I do not think, and I would submit that it is not to the  
23 benefit of the estate, it is not to the likely workout of this  
24 case, that it would be best served by entering a preliminary  
25 injunction, which it appears to me prevents Mr. Dondero from

1 saying good morning to one of the employees of the Debtor that  
2 he knows.

3 It seems to me, Your Honor, that the injunction, by its  
4 terms, as Mr. Morris would have it, is an injunction that  
5 would prevent Mr. Dondero from discussing politics with Mr.  
6 Ellington. And it seems to me that an injunction that broad,  
7 that extensive, and one which lasts, as far as I can tell,  
8 until infinity, that such an injunction is not the right thing  
9 to do, given, if nothing else, the First Amendment to the  
10 United States Constitution.

11 That will conclude my presentation, and I will turn it  
12 over to the wiser and better-spoken colleague, John Bonds.  
13 Thank you, Your Honor.

14 THE COURT: Thank you. Mr. Bonds, what else do you  
15 have to say?

16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

17 MR. BONDS: Your Honor, has the Debtor met the  
18 requirements for the issuance of a preliminary injunction? We  
19 submit that they have not. And the Fifth Circuit's rules are  
20 fairly clear as to the awarding of a preliminary injunction.

21 First, let's look at the type of preliminary injunction  
22 that the Debtor would like you to enter today. It provides  
23 that Mr. Dondero cannot talk to any employee, regardless of  
24 what is being communicated. Mr. Dondero can pass an employee  
25 on the street, but he can't acknowledge the employee, with

1 whom he may have worked for years. Nor can he talk to his  
2 personal assistants, again, which he has worked with for  
3 years. Does that violate the First Amendment of the  
4 Constitution?

5 What about the shared services agreement? What about the  
6 pot plan which he is advocating as a means of reorganizing the  
7 Debtor? Not the liquidation proposed by the Debtor. Can Mr.  
8 Dondero communicate with creditors about the pot plan and the  
9 other proposals without violating the TRO or the preliminary  
10 injunction which deals with interfering with the Debtor's  
11 business?

12 Your Honor, I think it's important to note that a  
13 preliminary injunction is an extraordinary remedy that may  
14 only be awarded upon a clear showing that the Plaintiff is  
15 entitled to such relief. Plaintiffs are entitled to a  
16 preliminary injunction if they show, one, a substantial  
17 likelihood that they will prevail on the merits of their  
18 claims; two, a substantial threat that they will suffer an  
19 irreparable injury if the injunction is not granted; three,  
20 their threatened injury outweighs the harm to the estate or  
21 the other party; and four, the public interest will not be  
22 disserved, misserved, if the preliminary injunction is  
23 granted.

24 The party seeking the preliminary injunction bears the  
25 burden of persuasion on all four requirements. We believe

1 that the Debtor today has failed to carry its burden of  
2 persuasion of proof with regard to the second element, which  
3 I'm going to refer to as the irreparable injury requirement.  
4 In order to show irreparable harm to the Court, the Plaintiff  
5 must prove that if the District Court denied the grant of a  
6 preliminary injunction, irreparable harm would be the result.  
7 Injuries are irreparable only when they cannot be undone  
8 through monetary remedies. There is no evidence before the  
9 Court today that Mr. Dondero cannot respond to any judgment  
10 that is rendered against him by this Court.

11 Your Honor, this preliminary injunction does not involve  
12 real property. Unlike the *Saldana* case, this request for the  
13 issuance of a preliminary injunction involves personal  
14 property only. The request that Mr. Dondero cease and desist  
15 all contact with employees is just wrong and may violate the  
16 First Amendment of the Constitution, as I previously stated.

17 We have other concerns regarding the issuance of a  
18 preliminary injunction. We feel that the preliminary  
19 injunction is too broad. It lacks a beginning and an end.  
20 When does the preliminary injunction terminate? What about  
21 the former employees? Once they are terminated, can Mr.  
22 Dondero speak to them? What about the pot plan? Is it gone  
23 forever? Can Mr. Dondero talk with the mediators about the  
24 pot plan? Can Mr. Dondero speak with the members of the  
25 U.C.C.?

1 It is easy to criticize Mr. Dondero. Did he violate the  
2 TRO? We submit that he didn't and the Debtor says that he  
3 did. What matters going forward is the lack of evidence of  
4 irreparable harm.

5 Mr. Seery sure wants to keep Mr. Dondero from talking to  
6 anyone in this case. Why is that? Does Mr. Seery believe  
7 that the only way to get his liquidation plan confirmed is to  
8 keep Mr. Dondero from talking to anyone? How will the  
9 preliminary injunction help the Debtor's creditors? Does  
10 keeping Mr. Dondero from talking with anyone mean that there  
11 will be a greater return to the creditor body? Does  
12 precluding Mr. Dondero from talking about his pot plan mean  
13 that the creditors will take home more money on their claims,  
14 or does it eliminate the possibility that they may take home  
15 more money on their claims?

16 Your Honor, what we are seeing here today is an attempt by  
17 a group to destroy what Mr. Dondero has built over the last  
18 few years. That isn't the way Chapter 11 should work.

19 Just one last thing to keep in mind, Your Honor. Mr.  
20 Seery's plan is a liquidation of the Debtor. Mr. Dondero's  
21 pot plan is a reorganization of the Debtor.

22 Thank you, Your Honor.

23 THE COURT: All right. Mr. Morris, you get the last  
24 word. Anything in rebuttal?

25 MR. MORRIS: I would just point out, Your Honor, that

1 nobody here has objected to the Debtor's motion for the entry  
2 of a preliminary injunction except Mr. Dondero. While I  
3 appreciate that this is an adversary proceeding, anybody who  
4 felt strongly about the matter certainly could have moved to  
5 intervene. The Creditors' Committee could have moved to  
6 intervene. Mr. Clemente could have stood at the podium and  
7 begged Your Honor not to impose the injunction because he  
8 thought it was in the best interest of creditors to allow Mr.  
9 Dondero to interfere with the Debtor's business and to speak  
10 with their employees. Nobody has done that, Your Honor.  
11 Nobody's here speaking on behalf of Mr. Dondero. Nobody's  
12 here to testify on his behalf. Nobody's -- there's no  
13 evidence in the record that supports or corroborates anything  
14 that he said at all, Your Honor.

15 Unless Your Honor has any specific questions, the Debtor  
16 is prepared to rest.

17 THE COURT: All right. I do not have any follow-up  
18 questions.

19 All right. I have a lot to say. I'm sorry, I apologize  
20 in advance, but I've got a heck of a lot to say right now.  
21 I'm going to give you a ruling on the motion before me, but  
22 I've got a lot to add onto that, so I hope all the key parties  
23 in interest are listening carefully. Mr. Bonds, in the video,  
24 I can only see you. I hope Mr. Dondero is just right there  
25 out of the video camera view. Okay, there you are. I wanted

1 to make sure you didn't wander off to take a bathroom break or  
2 anything. So, again, I have a whole lot to say here today.

3 First, I'm going to rule on the motion. The Court does  
4 find there is sufficient compelling evidence to grant a  
5 preliminary injunction that is completely consistent with the  
6 prior TRO. Okay? So, specifically, the Court today is going  
7 to continue to prevent Mr. Dondero from (a) communicating in  
8 any way, directly or indirectly, with any of the Debtor's  
9 board members -- I think that's really Strand board members --  
10 unless Mr. Dondero's counsel and counsel for the Debtor are  
11 included. Okay. I'm saying those words slowly and carefully.  
12 There is no bar on Mr. Dondero talking to the board about a  
13 pot plan or anything else in the universe Mr. Dondero wants to  
14 talk to them about. There's just a preclusion from him doing  
15 it without his counsel and the Debtor's counsel present.

16 Okay?

17 I did that before and I'm doing it now because I've seen  
18 concerning evidence that some communications to Mr. Seery and  
19 others had an intimidating tone, a threatening tone one or two  
20 times, an interfering tone. So, guess what, we're just going  
21 to have lawyers involved if any more conversations happen.

22 Okay.

23 So (b) the preliminary injunction, just as the TRO did, is  
24 going to prevent Mr. Dondero from making any threats of any  
25 nature against the Debtor or any of its directors, officers,

1 employees, professionals, or agents. Okay. It's almost  
2 embarrassing having to say that or order that with regard to  
3 such an accomplished and sophisticated person, but, you know,  
4 I saw the evidence. I've got to do what I've got to do. You  
5 know, words in a text like, Don't do it, this is your last  
6 warning, and some of the other things, that has a threatening  
7 tone, so I'm going to order this.

8 Third, the preliminary injunction will prevent Mr. Dondero  
9 from communicating with any of the Debtor's employees except  
10 as it specifically relates to shared services provided to  
11 affiliates owned or controlled by Mr. Dondero.

12 Now, I'm going to elaborate in a couple of ways here. I  
13 think in closing argument there was a suggestion that he can't  
14 even talk to his friend, Mr. Ellington, about anything. Well,  
15 I heard today that Mr. Ellington and Mr. Leventon are no  
16 longer employees of the Debtor, so actually that's not an  
17 issue. But while this is very restrictive, while this  
18 prevents Mr. Dondero from engaging in small talk with Debtor  
19 employees about the weather or the football game or whatever,  
20 it's regrettable, but I feel like I'm forced to order this  
21 now, because, again, the communications that were put in the  
22 record. Okay? We just can't take any chances, as far as I'm  
23 concerned, with regard to there being potential interference  
24 with the Debtor's operations that might be harmful or contrary  
25 to creditors' interests.

1 Fourth, the preliminary injunction, just like the TRO,  
2 will prevent Mr. Dondero from interfering with or otherwise  
3 impeding the Debtor's business, including but not limited to  
4 the Debtor's decisions concerning its operations, management,  
5 treatment of claims, disposition of assets owned or controlled  
6 by the Debtor, and pursuit of any plan or alternative to the  
7 plan.

8 Now, I understand the argument that this is pretty broad  
9 and might be, I don't know, subject to some disputes regarding  
10 was it interference, did it impede the Debtor's business or  
11 not? You know what, if you follow the other prongs of the  
12 preliminary injunction, that you don't talk to the board  
13 without your counsel, Mr. Dondero, and the Debtor's counsel,  
14 and you don't talk to Debtor's employees except with regard to  
15 matters pertaining to the shared services agreement, and,  
16 bottom line, if you just run everything by your attorneys,  
17 you'll be okay. We won't have this ambiguous, vague,  
18 problematic territory.

19 Fifth, I will go ahead and, for good measure, belts and  
20 suspenders, whatever you want to call it, prevent Mr. Dondero  
21 from otherwise violating Section 362(a) of the Bankruptcy  
22 Code.

23 Now, I read the response filed at 9:30 last night by Mr.  
24 Dondero's counsel. It's a good response. It makes legal  
25 arguments about that being, you know, it just being too vague.

1 Well, to the contrary, it just restates what's already in the  
2 Bankruptcy Code, right? Persons are prohibited from violating  
3 Section 362(a) of the Bankruptcy Code. If anything, it's the  
4 sky is blue, right, just stating what is true. But I  
5 understand Debtor wanting some clarity in an order, because we  
6 want you to take this seriously, Mr. Dondero, and not just do  
7 something and then say, well, you didn't know what was in the  
8 Code. You know, you need to consult with your lawyer. That's  
9 going to be in there.

10 Bottom line, I want that language in there because, Mr.  
11 Dondero, I want you to see an order that this Court expects  
12 you to comply with the Bankruptcy Code. And again, if you  
13 don't understand, if you're unsure whether you can take action  
14 x or y, consult with your very capable lawyers.

15 I note that if you listened carefully to these words,  
16 there was nothing in here that stopped Mr. Dondero from  
17 talking to the Creditors' Committee about a pot plan. Nothing  
18 in this injunction, nothing in the previous TRO, ever  
19 prohibited that.

20 Last, with regard to the ruling -- and again, I've got a  
21 lot more to say when I'm done -- I am going to further enjoin  
22 Mr. Dondero from what we said in the TRO: causing,  
23 encouraging, or conspiring with any entity controlled by him  
24 and/or any person or entity acting on his behalf from directly  
25 or indirectly engaging in any of the aforementioned items.

1 This is not an injunction as to nonparties to the adversary  
2 proceeding. It is an injunction as to Mr. Dondero from doing  
3 the various enjoined acts that I previously listed under the  
4 guise of another entity or a person that he controls.

5 Again, if you're dealing with and through your attorneys,  
6 Mr. Dondero, I don't think this will be hard to maneuver.

7 I guess I'm actually not through with my ruling yet. I do  
8 want to add that the Court rules that the injunction shall  
9 last through the time of confirmation of a plan in this case  
10 unless otherwise ordered by this Court.

11 And as to the legal standards, I want to be clear for the  
12 record that the Court believes this injunction is necessary to  
13 avoid immediate and irreparable harm to the Debtor's estate  
14 and to its reorganization prospects. I believe that there's a  
15 strong likelihood the Debtor will succeed in a trial on the  
16 merits of this adversary proceeding. I believe the public  
17 interest strongly favors this injunction. And I believe the  
18 balance of harms weighs in favor of the Debtor on all of these  
19 various issues.

20 Again, I want to reiterate, the intimidation and  
21 interference that came through in some of these email and text  
22 communications was concerning to the Court and is a motivation  
23 for this preliminary injunction.

24 Now, I'm going to add on a couple of things today. The  
25 first thing I'm going to add on -- and I want this, Mr.

1 Morris, in the order you submit. You didn't ask me for this,  
2 but I'm going to do it. I'm going to order you, Mr. Dondero,  
3 to attend all future hearings in this bankruptcy case unless  
4 and until this Court orders otherwise. And I'm doing this --  
5 it's not really that unusual a thing for me to do. I  
6 sometimes order this in cases when I'm concerned about, you  
7 know, is the businessperson paying attention to what's going  
8 on in the case and is he engaged, is he invested, is he  
9 available when we need him?

10 In this case in particular, the evidence was that you  
11 didn't read the TRO. You were not aware of its basic terms  
12 and you didn't read it. Okay? So that was what sent me over  
13 the edge as far as requiring this new element that you're  
14 going to attend every hearing. Obviously, we're doing video  
15 court, so that's not that much of a burden or imposition. You  
16 can pretty much be anywhere in the world and patch in by  
17 video, since we're in the pandemic and not doing live court.  
18 But I think it's necessary so I know you hear what I rule and  
19 what goes on in this case.

20 I will tell you that I was having a real hard time during  
21 your testimony deciding if I believe you didn't read the TRO  
22 or know about the different things that were prohibited. You  
23 know, I was thinking maybe you're not being candid to help  
24 yourself in a future contempt hearing, or actually maybe  
25 you're being a hundred percent honest and candid but you're

1 kind of hiding behind your lawyers so that you can argue the  
2 old plausible deniability when it suits you.

3 But no more. No more. I'm not going to risk this  
4 situation again of you not knowing what's in an order that  
5 affects you. So you must be in court by video until I order  
6 otherwise.

7 Second, and I regret having to do this, but I want it  
8 explicit in the preliminary injunction that Mr. Dondero shall  
9 not enter Highland Capital Management's offices, regardless of  
10 whether there are subleases or agreements of Highland  
11 affiliates or Dondero-controlled entities to occupy the  
12 office, unless Mr. Dondero has explicit written permission  
13 that comes from Highland's bankruptcy counsel to Dondero's  
14 bankruptcy counsel. Okay? If he does, it will be regarded as  
15 trespassing.

16 And, I don't know, are there security guards on the  
17 premises? I mean, gosh, I hate to be getting into this  
18 minutia, but -- well, I just want it explicit in the order  
19 that Mr. Dondero, I'm sorry, but you can't go to these offices  
20 without written permission. And again, that can only be given  
21 from Debtor's counsel to Mr. Dondero's counsel. Okay? So  
22 it's going to be trespassing. You know, someone can call the  
23 Dallas Police Department and have you escorted out. Again, I  
24 hate having to do that. It's just, it's embarrassing for me.  
25 I think it's embarrassing for everyone. But I'm backed up in

1 that corner.

2 Next, I am going to ask that it be clear that Mr. Dondero  
3 can deal with the Unsecured Creditors' Committee and its  
4 professionals with regard to talking about a pot plan.

5 And next, I'm going to add -- and I think, Mr. Morris, you  
6 requested this at some point today in oral argument -- Mr.  
7 Ellington and Mr. Leventon shall not share any confidential  
8 information that they received as general counsel, assistant  
9 general counsel for the Debtor, without Debtor's counsel's  
10 explicit written permission. Okay? So we've got that in  
11 writing.

12 And, you know, that's a little awkward because they're not  
13 here, they weren't parties to the injunction, but they were  
14 Debtor employees until recently. If they want to risk  
15 violating that and come back to the Court and argue about  
16 whether they got notice and whatnot of that, they can argue  
17 that, but I want it in the order regardless.

18 So that is the ruling. And now I want to kind of talk  
19 about a few other things. And before we're done here, Mr.  
20 Morris, I'll ask do you have questions, does Mr. Bonds have  
21 questions, does anyone have questions about the ruling. But I  
22 want to talk about a couple of things. And again, I hope that  
23 I'm coming through loud and clear, Mr. Bonds, in your office  
24 for Mr. Dondero to hear this. It's really, really important  
25 that he heard what I'm about to say. I'm going to say some

1 kind of unpleasant things and then I'm going to say some  
2 hopeful things, okay?

3 Mr. Dondero? Okay. Mr. Dondero, I'm going to -- Mr.  
4 Morris, you've got your hands on your head. Did I miss  
5 something?

6 MR. MORRIS: No. I was just surprised to see Mr.  
7 Dondero on his phone. I apologize, Your Honor.

8 THE COURT: Oh, my goodness. Were you on your phone,  
9 Mr. Dondero?

10 MR. DONDERO: No, I was not.

11 THE COURT: Okay. I want you to listen to this  
12 really closely, and then I promise I'm going to have something  
13 hopeful to say after this very unpleasant stuff. You know, I  
14 keep a whiteboard up at my bench. I don't know if you can  
15 read it. But sometimes I hear something in a hearing and I  
16 think, okay, this is one of my major takeaways from what I  
17 heard today. And I've got two, I've got two big takeaways  
18 here. Number one on my whiteboard is Dondero's spoliated  
19 evidence. Game-changer for all future litigation. Okay.

20 MR. DONDERO: I'm sorry. I didn't hear that. I  
21 didn't hear that. Could you repeat that, please?

22 THE COURT: Mr. Dondero, spoliated evidence, game-  
23 changer in future litigation.

24 Okay. Let me tell you, the throwing away of the phone,  
25 that was the worst thing I heard all day. That was far and

1 away the worst thing I heard all today. I don't know what I'm  
2 going to hear down the road to fix this, but if it's really  
3 gone, let me tell you how bad this is. We have all sorts of  
4 Federal Rules of Civil Procedure that talk about this being a  
5 bad thing, but I wrote an opinion a couple years ago dealing  
6 with spoliation of electronic evidence, and I think it might  
7 be helpful for everyone to read. It was called *In re Correra*,  
8 C-O-R-R-E-R-A. I have no idea what the cite on it is. But in  
9 this case, *Correra*, we had a debtor who had a laptop, and he  
10 gave the laptop to his personal assistant, who took it away to  
11 another state. And at some point during the case, parties  
12 discovered, oh, there's a laptop that may have a treasure  
13 trove of information. Who knows? Maybe it does; maybe it  
14 doesn't. But there's a laptop that we just now learned about  
15 that the personal assistant has.

16 And so I issued an order that she turn it over, and there  
17 were subpoenas and depositions, blah, blah, blah. Long story  
18 short, the evidence ended up being that she deleted everything  
19 on the laptop, and then -- this would almost be funny if it  
20 wasn't so serious -- she downloaded thousands of pictures of  
21 cats onto the laptop. I kid you not, cats. Meow, meow, cats.  
22 And she downloaded a hundred-something full-length movies.  
23 And we had two days of forensic experts come in and take the  
24 witness stand and tell me about how, okay, this is like an  
25 amateurish -- you've talked about amateur hour today -- this

1 is kind of an amateurish way of deleting data, right. You  
2 first delete all the files on the laptop and then you cover  
3 over all the space to make sure the information is not  
4 retrievable. You know, this genius ended up retrieving some  
5 of the information.

6 But the long story short is I sanctioned the debtor and  
7 his assistant jointly and severally. You'll have to go back  
8 and look at the opinion. I'm pretty sure it was over a  
9 million dollars. And I can't remember if that was attorneys'  
10 fee-shifting only, or monetary, like penalty on top of the  
11 attorneys' fees-shifting. I just can't remember. But maybe  
12 poor Tara needs to be advised of that opinion, too. I mean,  
13 --

14 But the other reason I put game-changer in future  
15 litigation is, in my *Correra* case, it wasn't just the monetary  
16 million-dollar sanction or whatever it was; it was a game-  
17 changer in future litigation because the adverse party to the  
18 debtor ended up arguing -- and it was the state of New Mexico,  
19 by the way -- they ended up saying, in all future litigation,  
20 we want you -- some adversaries, we want you to make an  
21 adverse inference. In other words, for all of these elements  
22 that we're trying to prove in our fraudulent transfer  
23 litigation and whatever else was going on, we want you to make  
24 an adverse inference that there would have been evidence there  
25 on that laptop that would have supported some of our causes of

1 action and it was destroyed to keep us from having that  
2 evidence.

3 And they brought forth all kinds of case law. It's a hard  
4 area. It's a really, really hard area. But I ended up --  
5 again, it's not in the main opinion. It was in subsequent  
6 orders. I ended up saying, yeah, I think you've met the  
7 standard here to draw adverse inferences.

8 So, again, this is a very unpleasant message for me to  
9 deliver today. But the destruction of the phone is my biggest  
10 takeaway of concern today, how that might have ramifications.  
11 You know, there are other bad things, too, about that. I'm  
12 not even going to go there right now. But the, you know,  
13 Title 18, you can ask your lawyer what that means, but okay.

14 My second big takeaway before we get to the hopeful stuff  
15 is -- and this is kind of harsh, what I'm about to say -- but  
16 Ellington and Leventon maybe care more about you, Mr. Dondero,  
17 than their law license. You know, I guess it's great to have  
18 people in your life who are very, very loyal to you. I mean,  
19 loyalty is a wonderful thing. But I am just so worried about  
20 things I've heard. Again, the phone and in-house lawyers.  
21 The biggest concerns in my brains right now. I have worried  
22 about them for a while.

23 You all will -- well, Mr. Dondero, you might not know  
24 this. But we had a hearing a few months ago, maybe September,  
25 October, where the Creditors' Committee was trying to get

1 discovery of documents. And we had some sort of hearing,  
2 maybe a motion to compel production. And we had many, many  
3 entities that you control file objections: NexPoint, NexBank.  
4 I can't even remember. We just had a whole slew. CLO Holdco.  
5 Many, many of these entities objected. And I was trying to  
6 figure out that day who was instructing them. And oh my  
7 goodness, I hope the in-house layers are not involved in this  
8 document discovery dispute, because, you know, they have  
9 fiduciary duties. And are -- you know, is it -- it feels like  
10 it's breaching a duty to the bankruptcy estate when it's in  
11 the bankruptcy estate's best interest to get these documents  
12 if you're meanwhile hiring lawyers for these other entities,  
13 Holdco, et cetera, and saying, Fight this.

14 I never really pressed it very hard back then, but I  
15 raised the issue and I said, I'm really, really concerned  
16 about this. And I continue to be concerned about it. I had  
17 experiences with Mr. Ellington in the *Acis* case where he  
18 testified on the witness stand, and later it looked a heck of  
19 a lot like he might have committed perjury. I hate to use  
20 such blunt terms. But I let it go. I'm just like, you know,  
21 I'm not going to -- you know, I'm going to just hope for the  
22 best that he misspoke.

23 But I'm getting a really bad taste in my mouth about  
24 Ellington and Leventon, and I hope that they will be careful  
25 and you will be careful, Mr. Dondero, in future actions.

1 Is Mr. -- I can't see Mr. Dondero. I want to make sure  
2 he's not on the phone. Okay. Okay. Thank you.

3 So where was I going to head next? I guess I want to say  
4 a couple of things now that I would describe as a little bit  
5 more hopeful, and that is pertaining to this whole pot plan  
6 thing.

7 You know, I tend to think, without knowing what's being  
8 said outside the courtroom, that a pot plan would be the best  
9 of all worlds, okay, because the plan that we have set for  
10 confirmation next week, I understand we have a lot of  
11 objections, and if I approve it, if I confirm the plan, we're  
12 going to have a lot of appeals and motions for stay pending  
13 appeal, and no matter how that turns out, we're going to have  
14 a lot of litigation. Okay? You know, we're going to have  
15 adversaries. And we have a not-very-workable situation here  
16 where we have these Dondero-controlled affiliates questioning  
17 Mr. Seery's every move.

18 I would love to have a pot plan that would involve, Mr.  
19 Dondero, you getting to keep your baby, okay? I acknowledge,  
20 everyone here acknowledges, you are the founder of this  
21 company. This is your baby. You created a multi-billion-  
22 dollar empire, okay? I would be shocked if you didn't want to  
23 keep your baby. Okay? If there was a reasonable pot plan, I  
24 would love it.

25 But I'm telling you, the numbers I heard didn't impress me

1 a heck of a lot. I'm not an economic stakeholder. It's not  
2 my claim that would be getting paid. But I can see where  
3 these Creditor Committee members, they're not going to think  
4 \$160 million -- \$90 million in cash, \$70 million in notes, or  
5 vive-versa -- is nearly enough. Okay?

6 So I am going -- what just happened? What just happened?  
7 I lost Mr. Dondero. Okay. This is getting kind of humorous,  
8 almost.

9 Okay. I am going to order that between now and the end of  
10 the day Tuesday there be good-faith, and I'll say face-to-face  
11 -- Zoom, WebEx, whatever -- negotiations between Mr. Dondero  
12 and his counsel and at least the Committee and its  
13 professionals regarding this pot plan.

14 Now, the train is leaving the station next Wednesday,  
15 okay? If we don't have Creditors' Committee and Debtor and  
16 Dondero rushing in here saying, Please continue the  
17 confirmation hearing next Wednesday, if we don't have like  
18 unanimous sentiment to do that, you know, this is a 15-month-  
19 old case, I'm going to go forward with the plan that's on  
20 file.

21 And it's been a long, expensive case. I had great  
22 mediators try to give it their best shot to get a grand  
23 compromise. I just, I'm not going to drag this out unless you  
24 all tell me Wednesday morning, We want you to continue this a  
25 week or two.

1           And let me tell you -- this may be the stars lining up, or  
2 it may not be -- I was supposed to have a seven-day trial  
3 starting the week after next, and then I was supposed to have  
4 a four- or five-day day trial starting immediately after that.  
5 And all of those lawyers came in and asked for a continuance  
6 because of COVID. They wanted a face-to-face trial, and so  
7 I've put them off until April.

8           So if you wanted to postpone the confirmation hearing to  
9 the following week or even the following week, I have the gift  
10 of time to give you. But I'm not going to do it lightly.  
11 I'm, again, I'm just going to order face-to-face meetings.  
12 And I said Dondero and his counsel and the Committee and its  
13 professionals. You know, if -- I'm not slighting the Debtor  
14 here or Mr. Seery, but I'm kind of taking a cue from what Mr.  
15 Morris, I think I heard you say, that at this point it's the  
16 Committee, it's the Committee's money, and I think that's the  
17 starting place. And if they want to join the Debtor in at the  
18 beginning or midway through, you know, wonderful, but I think  
19 it needs --

20           MR. POMERANTZ: Your Honor, this is Jeff -- this is  
21 Jeff Pomerantz. I hate to interrupt, and I never do that to a  
22 judge, but I did have something to say in my comments about a  
23 continuance that we've talked about with the Committee and  
24 some other developments in the case.

25           THE COURT: Oh.

1 MR. POMERANTZ: I'm happy to wait. But it has -- it  
2 has nothing to do with the comments you said, although, as I  
3 think you've heard from me before, the Debtor has been a  
4 supporter, a supporter of a pot plan. Mr. Seery has done a  
5 tremendous amount of work working with Mr. Dondero, working  
6 with Mr. Lynn, to try to make that happen. And if the  
7 Committee is willing to engage in a pot plan, we would  
8 definitely support that. Because we do agree with Your Honor  
9 that, absent a pot plan, we are looking at a lot of  
10 litigation.

11 Some of the issues you're going to have to deal with at  
12 the confirmation hearing if we do not have a peace-in-the-  
13 valley settlement is exculpations, releases, moratoriums on  
14 litigation, extensions of your January 9th order --

15 THE COURT: Uh-huh.

16 MR. POMERANTZ: -- with respect to pursuing certain  
17 people.

18 So, we get it, and we've gotten it from the beginning.  
19 And Mr. Seery, sometimes even at a fault, has been  
20 singlehandedly focused on trying to get that done. It's just  
21 unfortunate where we are here.

22 But having said that, I wanted to first apprise the Court  
23 of a recent major development in the case. I'm pleased to  
24 report that the Debtor and UBS have reached a settlement in  
25 principle which will resolve all of UBS's claims against the

1 estate, all of UBS's claims against Multi-Strat. The parties  
2 are working on documentation. The settlement is subject to  
3 internal approvals from UBS, but we've been led to believe  
4 those approvals will occur, and we would hope to file a Rule  
5 9019 motion in the near future.

6 I'm sure Your Honor is quite pleased to hear that. The  
7 UBS matters have taken a substantial amount of time. And with  
8 the settlement of UBS's claims, the only material unresolved  
9 claim, unrelated to Mr. Dondero or the employees, are Mr.  
10 Daugherty. And Mr. Seery will continue to work with Mr.  
11 Daugherty to try to settle that.

12 THE COURT: Okay.

13 MR. POMERANTZ: With respect to the scheduling, with  
14 respect to the scheduling, Your Honor, there are three  
15 significant matters on for hearing on the 13th. The first is  
16 the Debtor's motion to approve a settlement with HarbourVest,  
17 which Mr. Dondero is contesting. Depositions are being  
18 conducted on Monday, and we anticipate an evidentiary hearing  
19 in connection therewith.

20 The Debtors, as Mr. Morris indicated earlier on in the  
21 hearing, have also filed a complaint and a motion for a  
22 temporary restraining order against certain of the Advisors  
23 and Funds owned and controlled by Mr. Dondero which relate to  
24 the CLO management agreements for which Your Honor has heard a  
25 lot of testimony today. We also expect that TRO to be

1 contested and for the Court to have an evidentiary hearing.

2 And as Your Honor mentioned, the confirmation of the plan  
3 was scheduled for Wednesday, and there were 15 objections. I  
4 would point out, Your Honor, all but four of which were Mr.  
5 Dondero, his related entities that he owns or controls, and  
6 employees or former employees.

7 The Court previously gave us time on the 13th and the  
8 14th, I think anticipating that we would have a lot and it may  
9 be necessary to go into two days. However, Your Honor, those  
10 two days are not going to be enough to deal with all the  
11 issues that we have before Your Honor.

12 So what we suggest, and we've spoken to the Committee and  
13 the Committee is supportive, that we continue confirmation to  
14 a day around January 27th. This will enable the Debtor to not  
15 only -- and the Committee -- not only to take Your Honor up on  
16 what you'd like to see accomplished in the next few days. I'm  
17 sure the Debtor is supportive and will be supportive, and we  
18 hope the Committee will engage in good-faith negotiations, and  
19 if there's a way to do a pot plan, we are all for it. It'll  
20 give time for that to happen.

21 But at the same time, and I think what you'll hear from  
22 Mr. Clemente, that we're willing to give a continuance, we all  
23 know that if there is not a settlement to be had, if there is  
24 not a pot plan to be had, this case has to confirm, it has to  
25 exit bankruptcy, and at least from the Debtor's perspective, a

1 lot of protections will have to be in place that basically  
2 this has not just been a pit stop in Bankruptcy Court and we  
3 return to the litigation ways that Highland is involved in.

4 So, Your Honor, we believe that the two evidentiary  
5 hearings on for next week probably will fill up both days. We  
6 would suggest that the first day be the complaint and the TRO  
7 against the Advisors and the Funds for the 13th, and the 14th  
8 be the HarbourVest.

9 We also recognized as we were preparing for today, Your  
10 Honor, looking ahead, that we thought it was not fair for us,  
11 although we know Your Honor works tirelessly and as hard as  
12 anyone on this hearing and that Your Honor would be prepared  
13 for confirmation and would be prepared for each of those  
14 trials, given the gravity of these issues, the extensive  
15 pleadings, pleadings that you would get in confirmation on  
16 Monday from the Debtor, that it made sense to continue the  
17 hearing.

18 So, again, fully supportive of Your Honor's mandate to try  
19 to see if we could work things out, fully supportive of a  
20 continuance until the 27th, if that date works for Your Honor,  
21 but we believe we do need to go ahead with the two matters  
22 that are on for calendar next week.

23 MR. RUKAVINA: Your Honor, this is Davor Rukavina.  
24 May I be heard briefly?

25 THE COURT: Oh my goodness. Who do you represent,

1 Mr. Rukavina?

2 MR. RUKAVINA: And I apologize -- Your Honor, I am  
3 the new counsel who will be representing the Funds and  
4 Advisors. I will probably be taking the laboring oar at  
5 confirmation.

6 I apologize I'm not wearing a suit and tie. I did not  
7 anticipate speaking right now.

8 I support -- to the extent that that's an oral motion for  
9 continuance by Mr. Pomerantz, I certainly support that. I  
10 would suggest that the Court give us an understanding of that  
11 today, because we do have depositions and discovery lined up  
12 which we can then push if the hearing on confirmation is  
13 pushed to the 27th. And we have no problem going forward on  
14 the other matters on the 13th.

15 So, I am co-counsel to K&L Gates, Your Honor, so whoever  
16 the K&L Clients are, they're now my clients as well. I just  
17 wanted to be heard briefly that we support the recommendation  
18 by Mr. Pomerantz and just urge that the Court give us finality  
19 on that issue today so that we're not burning the midnight  
20 oil, many sets of lawyers preparing for confirmation on the  
21 13th.

22 Thank you for hearing me, Your Honor.

23 THE COURT: All right. So, just to be clear, the  
24 proposal is that we go forward next Wednesday on the newest  
25 request for a TRO with regard to -- is -- the CLO Funds and

1 the Advisors. I'm forgetting the exact names. And then that  
2 would take likely the whole day, but whether it does or does  
3 not, we would roll over to Wednesday of next week -- that'd be  
4 the 14th -- to do the HarbourVest. It's a compromise motion,  
5 right? Is there anything else?

6 MR. POMERANTZ: No, correct, it's the compromise  
7 motion, Your Honor. There are two pending objections on this  
8 and discovery scheduled for Monday.

9 THE COURT: All right. Well, as far as --

10 MR. CLEMENTE: Your Honor?

11 THE COURT: Yes, who is that?

12 MR. CLEMENTE: Oh, Your Honor, it's Matt Clemente at  
13 Sidley on behalf of the Committee. I'm here, and I thought  
14 maybe I'd offer just a couple of comments at this point, but  
15 I'm happy to hold them.

16 THE COURT: Well, --

17 MS. SMITH: And Your Honor, this is Frances Smith. I  
18 would also like to be heard before you wrap up.

19 THE COURT: Okay. Well, I guess generally I want to  
20 know, does anyone have any objection -- I can't imagine they  
21 would -- but any objection to pushing confirmation out to  
22 around the 27th? I'm going to say that because I have an  
23 issue middle of the day the 28th. If we do it the 27th, I  
24 could only go a day and a half, okay? I have to go out of  
25 town the evening of the 28th, and I would be out the 29th as

1 well. That's Thursday and Friday. So we'll talk about that.  
2 But anyone, Mr. Clemente or anyone else, want to say anything  
3 about continuing the confirmation?

4 MR. CLEMENTE: Your Honor, it's Matt Clemente at  
5 Sidley. No, Your Honor, we're supportive of that schedule.

6 And Your Honor, just briefly, I heard my name discussed  
7 quite a bit at this hearing as well as the Committee. I'm not  
8 going to get into it unless Your Honor would like me to, but  
9 let me be very clear: The committee has taken very seriously  
10 the pot plan proposals that Mr. Dondero has presented, and  
11 there's much more to the discussion other than what Mr. Lynn  
12 suggested in his remarks.

13 So I'm not going to get into all that unless Your Honor  
14 thinks it's necessary. I think it's of no moment here. But I  
15 did want Your Honor to know that we have carefully considered  
16 the pot plan proposals and have communicated a variety of  
17 issues about that to Mr. Lynn and will continue to take the  
18 direction of Your Honor and engage on a pot plan, Your Honor.  
19 But I did not want there to be any suggestion that we did not  
20 take it seriously and that there was much, much more  
21 consideration and discussion about it than what was suggested.

22 THE COURT: Uh-huh.

23 MR. CLEMENTE: Thank you, Your Honor.

24 THE COURT: All right.

25 MS. SMITH: Your Honor, this is Frances Smith.

1 THE COURT: Who do you represent, Ms. Smith?

2 MS. SMITH: Your Honor, we were recently retained by  
3 the four senior employees: Tom Surgent, Frank Waterhouse,  
4 Scott Ellington, Isaac Leventon, along with Baker & McKenzie,  
5 and I believe we have the Baker & McKenzie lawyers Deb  
6 Dandeneau and Michelle Hartmann on the line.

7 Your Honor, we have listened to the whole hearing. And I  
8 was not going to make an appearance. I was following your  
9 instructions and listening carefully. But Your Honor, I --  
10 first of all, we hate to be before you for the first time in a  
11 discovery dispute. We did file a very limited objection to  
12 the plan because of the disparate treatment of our clients,  
13 which we are not arguing today, of course. We received -- it  
14 is our usual practice, Your Honor -- you've known me for a  
15 long time -- to cooperate on having witnesses appear. We got  
16 -- we were notified very late Tuesday that the Debtor's  
17 counsel would like two of our clients to appear. We made what  
18 we thought was a reasonable request for a copy of the  
19 transcript from the deposition. We were invited to the  
20 deposition and then told we could not attend, or our clients  
21 could not attend. When we offered to make it lawyers-only,  
22 they said no. So we did not produce our clients without a  
23 subpoena.

24 Our clients have not been evading service. As far as we  
25 know, they were each attempted service one time, late

1 Wednesday, when they were -- around dinnertime. Mr. Leventon  
2 was home all day today. Didn't go any -- or yesterday.  
3 Didn't go anywhere. Was not served. Wasn't served this  
4 morning. The same, as far as we know, with Mr. Ellenton.

5 Your Honor, on the order that you just entered, I am a  
6 little unclear of where your findings of fact stopped. First  
7 of all, I do not think that you can enjoin Mr. Ellenton and  
8 Mr. Leventon. They are not parties to the adversary  
9 proceeding.

10 You know, we did some very quick research. There's a  
11 Seventh Circuit case, a district court may not enjoin  
12 nonparties who are not either acting in concert with an  
13 enjoined party nor in the capacity of agents, employees,  
14 officers of the enjoined party. Mr. Ellington and Mr.  
15 Leventon are not agents, employees, officers of Mr. Dondero.  
16 So I think that, Your Honor, you cannot make that ruling.

17 Of course, you can rule that Mr. Dondero cannot talk to  
18 Mr. Leventon and Mr. Ellington. That might be a way to fix  
19 that one part. But as nonparties, I don't believe that you  
20 can enjoin them.

21 Also, Your Honor, there was just no evidence against them  
22 to support that. Out of more than two dozen exhibits, there  
23 was one mention of Mr. Leventon, where all he did was give Mr.  
24 Dondero Matt Clemente's phone number. And you yourself ruled,  
25 Your Honor, that Mr. Dondero could speak with the Committee,

1 so that wouldn't even have been a violation of your orders.  
2 There's three related to Mr. Ellington, but no evidence of  
3 confidential information.

4 And, Your Honor, I'm very concerned about the comments  
5 that you made about Mr. Ellington and perjury. I just want to  
6 make sure that it's clear on the record that those were not  
7 findings of fact. That did not -- there was no evidence about  
8 that today. And I understand Your Honor's frustration. I was  
9 -- but I just want to be very clear on the record that those  
10 were not findings of fact that you were making during that  
11 part of your comments. I was a little unclear about where the  
12 ruling exactly stopped when you said you wanted to add onto  
13 the order and then you were going to make a few more comments.

14 So that's all I have, Your Honor.

15 THE COURT: Okay.

16 MS. SMITH: Thank you for listening and --

17 THE COURT: Thank you. Fair comments, one and all.

18 I'm first going to tweak. I was concerned. You heard me  
19 express concern about, you know, Ellington and Leventon aren't  
20 parties to this adversary. Not here. So here's -- Mr.  
21 Morris, I assume you're the scrivener. Let's change what I  
22 said earlier and have the injunction read that Mr. Dondero  
23 shall not request that Mr. Ellington or Mr. Leventon share any  
24 confidential information they received as general counsel or  
25 assistant general counsel for the Debtor without Debtor's

1 counsel's explicit written permission, nor accept any  
2 confidential information that the two of them may have  
3 received as general counsel or assistant general counsel for  
4 the Debtor. Okay? So the injunction is --

5 MR. MORRIS: Your Honor, if I may, --

6 THE COURT: Who?

7 MR. MORRIS: Your Honor, if I may, that is not  
8 sufficient for us, because that means that they can actually  
9 share it with him as long as he doesn't request it. I'm a  
10 little surprised --

11 THE COURT: No. You didn't hear the accept -- the  
12 last part.

13 MR. MORRIS: Okay.

14 THE COURT: I added on at the end, nor shall Mr.  
15 Dondero accept any confidential information. They -- he shall  
16 not request that they share it, nor shall he accept it. Okay?  
17 I --

18 MR. MORRIS: So, but that -- my concern is that that  
19 makes Mr. Dondero the arbiter of what's confidential and  
20 what's privileged. And I think that's improper. I think it's  
21 really reasonable, and I'm surprised -- you know, we're all  
22 advocates here, so I take no issue with counsel, but the order  
23 was going to be pretty simple: Don't disclose privileged or  
24 confidential information. If they don't like that, that's  
25 fine. Just bar Mr. Dondero from speaking to either one of

1 them, period, full stop. Because we should not be in a  
2 position where he doesn't request it but somehow they send it  
3 to him. It is confidential.

4 I mean, who's deciding what's confidential here? Mr.  
5 Ellington? Mr. Leventon? Mr. Dondero? Just stop their  
6 communication. Mr. Dondero is subject to the Court's order.  
7 He's the one who's subject to this motion. Bar him from  
8 speaking to either one of them. It's a very -- very simple  
9 solution.

10 MR. BONDS: Your Honor, I agree that it's a simple  
11 solution. It's, I mean, not correct to assume that Mr.  
12 Dondero is in any way going to breach his obligations to the  
13 Court or to Mr. Ellington and Mr. Leventon. I don't see where  
14 -- what we're talking about.

15 MS. SMITH: Also, Your Honor, I have to object to him  
16 disparaging my clients that way. There's been no evidence  
17 that they improperly shared any information. They are  
18 licensed lawyers and they know the Rules of Professional --  
19 they know the rules of professionalism, so --

20 THE COURT: Okay. I, you know, I didn't make a  
21 finding earlier when I held out my two giant takeaways, to get  
22 to your later question, no findings. But I really hope you  
23 share with them everything I said, the concerns I expressed.  
24 Maybe get the transcript.

25 MS. SMITH: Absolutely, Your Honor.

1 THE COURT: Because I have huge concerns about  
2 conflicts of interest here. Okay? Huge, huge concerns. I  
3 had them back when we had the discovery fight, Committee  
4 wanting documents, and, you know, and I still have them. You  
5 know, did Ellington know about the TRO?

6 MS. SMITH: Understood, Your Honor.

7 THE COURT: Okay. So let me backtrack. We already  
8 had a TRO that prevented Mr. Dondero from talking to any  
9 employees of the Debtor unless it was about shared services  
10 agreement.

11 So, Mr. Bonds, I'm going to flip it back to you on this  
12 one. Why shouldn't I at this point just say, okay, guess  
13 what, no talking to Mr. Leventon or Ellington for the time  
14 being? Why --

15 MR. BONDS: First of all, --

16 MS. SMITH: Your Honor, that's acceptable to us.

17 THE COURT: Okay. What's wrong with that, Mr. Bonds?

18 MR. BONDS: Your Honor, we don't believe that Mr.  
19 Dondero has violated the TRO.

20 And secondly and more importantly, we don't believe that  
21 there's any way that you can enter an order that singles out  
22 two former employees. I mean, that's bizarre.

23 THE COURT: If I'm concerned that it's thwarting the  
24 reorganization efforts and there are conflicts of interest  
25 here, why can't I?

1           You know, this is -- I hate to say it, but I feel like  
2 I've been in the role of a divorce judge today. We have very  
3 much a corporate divorce that has been in the works, unless we  
4 get this pot plan on track, okay, and I'm a judge having to  
5 enter interim orders keeping one spouse away from the other,  
6 keeping one spouse out of the house, keeping one spouse away  
7 from the kids. It's not pleasant at all. But I don't -- the  
8 more I think about it, the more I have authority to do it just  
9 to protect, to protect the nest egg here.

10           MS. SMITH: Your Honor, we are perfectly fine with  
11 you enjoining Mr. Dondero from speaking to our clients, and we  
12 will convey that to our clients.

13           THE COURT: Okay. Mr. Bonds, I can't hear you.

14           MR. BONDS: I'm sorry, Your Honor. What evidence is  
15 there of irreparable harm as to Mr. Dondero talking with  
16 either Mr. Leventon or Mr. Ellington?

17           THE COURT: Okay. Do I need to parse through the  
18 communications I saw? Do I need to parse-

19           MR. BONDS: Yeah, I think so. I mean, I don't  
20 understand.

21           THE COURT: Okay. I never authorized Mr. Ellington  
22 to be the settlement lawyer or whatever, okay? I never would  
23 have, okay? And maybe Mr. Seery, you know, said something to  
24 -- early on in the case to make him think he had that  
25 authority, but no, we're done. Okay? And I feel like it's

1 causing more harm than good right now. Okay?

2 I don't know who instructed all of these Dondero-  
3 controlled entities to hire lawyers. I don't know if  
4 Ellington and Leventon have been giving instructions to these  
5 entities. But we've got conflicts everywhere now. Okay?  
6 We've got -- and by the way, I'm just going to list them now.  
7 We have, of course, Bonds Ellis representing Dondero. We have  
8 Doug Draper, Heller Draper, now representing these trusts, Get  
9 Good Trust, Dugaboy Investment Trust. We have K&L Gates and  
10 now Munsch Hardt also representing the Advisors, NexPoint and  
11 the various CLO or other Funds. We have CLO Holdco  
12 represented by Kane Russell Coleman Logan. We have NexPoint  
13 Real Estate represented by Wick Phillips. Who have I left --  
14 and, of course, the employees, Baker & McKenzie and Ms. Smith.  
15 We have Spencer Fane in there for other current or former  
16 employees. We have Loewinsohn Flegle in there for certain  
17 former or current employees.

18 I mean, the proliferation of lawyers. And again, I don't  
19 know if Mr. Ellington and Mr. Leventon have had a role in  
20 hiring counsel, wearing their hat for these other entities or  
21 not. Can anyone tell me? Maybe I'm worried about something I  
22 shouldn't be worried about.

23 MR. DONDERO: You're worried about something you  
24 shouldn't worry about, Your Honor.

25 THE COURT: Okay. So Ellington --

1 MR. MORRIS: Your Honor, I would just point to the  
2 evidence that's in the record, Your Honor. You have Mr.  
3 Dondero asking Mr. Ellington to show leadership in  
4 coordinating all of the lawyers you just mentioned. It's in  
5 the record.

6 THE COURT: Yes. I'm just going to, until otherwise  
7 ordered, no conversations between Dondero and Ellington and  
8 Leventon, and that's just going to be my ruling until further  
9 order. That's what I feel best about.

10 Now, let me ask you, knowing that I could only give you a  
11 half a day on the 28th of January, if we start the  
12 confirmation hearing on whatever the plan looks like on  
13 January 27th, I mean, do people want to go with that, --

14 MR. POMERANTZ: Your --

15 THE COURT: -- even knowing we might not finish that  
16 day, or no?

17 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.  
18 Maybe if we could start on the 26th, have the 26th, 27th, and  
19 then maybe half of the 28th. I would think two and a half  
20 days should be enough, notwithstanding the volume of  
21 objections, because I think you'll find that, while there may  
22 be some evidence, I think the majority of the objections are  
23 really legal in nature.

24 THE COURT: All right. Traci, are you out there in  
25 video-land?

1 THE CLERK: Yes, I'm here.

2 THE COURT: Okay. Have I overcommitted the 26th? If  
3 we start the 26th at 9:30 in the morning, can we do that? Or  
4 --

5 MR. BONDS: Your Honor?

6 THE CLERK: That'd be fine.

7 THE COURT: Okay.

8 THE CLERK: Just remember that you have an  
9 appointment at lunchtime that day at noon on the 26th.

10 THE COURT: Okay. I --

11 THE CLERK: You don't have any court hearings.

12 THE COURT: Okay.

13 MR. BONDS: Your Honor, I'm sorry.

14 THE COURT: Go ahead.

15 MR. BONDS: Your Honor, I'm sorry. This is John  
16 Bonds. I have a hearing on the 26th that I can't miss.

17 THE COURT: Well, can someone else --

18 MR. POMERANTZ: Your Honor, we would request, right,  
19 that Mr. Lynn lead the confirmation hearing. There's a lot of  
20 lawyers. If we try to look at everyone's calendar, we're  
21 never going to be able --

22 THE COURT: Yes.

23 MR. POMERANTZ: -- to get something that's good for  
24 everyone.

25 THE COURT: Okay. Yes. Well, Mr. Lynn or Mr. Assink

1 can handle it, Mr. Bonds.

2 So we're going to start the 26th at 9:30. We'll go all  
3 day, except I have something at lunchtime, apparently. And  
4 then we'll go all day on the 27th, and then I can give you  
5 half a day on the 28th.

6 So you'll upload immediately a notice to that effect, Mr.  
7 Pomerantz.

8 MR. POMERANTZ: Yes, we would.

9 Your Honor, in terms of our documents in support of  
10 confirmation, we want to make it convenient with the Court.  
11 We know your Court would at least need one business day, so we  
12 would prefer to file, say, by 2:00 Central on the 24th, on a  
13 Sunday. Everyone will have it, and have one business day. I  
14 mean, the old order only had one business day in advance as  
15 well. So that's what we would propose for our confirmation  
16 documents to be filed.

17 MR. RUKAVINA: Your Honor, this is Davor Rukavina.  
18 An important issue here is how the creditors have voted, and I  
19 have no idea how they have voted. The voting deadline has  
20 expired. So I have no problem with what Mr. Pomerantz  
21 suggests, but I do think that the Debtor should file its  
22 tabulation of votes sooner rather than later so we all know  
23 one of the central elements for the hearing that we'll have.

24 THE COURT: Okay.

25 MR. POMERANTZ: That's fair, Your Honor. We're

1 prepared to file the summary of voting and tabulation by the  
2 15th of January.

3 THE COURT: Okay. Very good.

4 So, backing up, Mr. Pomerantz, you asked that I approve  
5 you filing any plan modifications by noon on Sunday, the 24th?  
6 Is that what you said?

7 MR. POMERANTZ: Yeah. So, there's a couple of  
8 things. There's our confirmation brief.

9 THE COURT: Uh-huh.

10 MR. POMERANTZ: There is our -- any evidence we would  
11 submit, although I suspect we are likely to provide live  
12 testimony, as opposed to a declaration. There was our summary  
13 of ballots, which we will now do on the 15th. And to the  
14 extent we have any modifications, we would provide them on  
15 Sunday by 12:00 noon Central time as well. Yes.

16 THE COURT: All right.

17 MR. RUKAVINA: Well, Your Honor, this is Davor  
18 Rukavina. Does that mean the witness and exhibit lists also  
19 will not be due until Sunday at noon? Because I would request  
20 that we have the normal period of time to exchange exhibits  
21 and witnesses.

22 MR. BONDS: Your Honor, I think that the normal time  
23 period is also important in this case.

24 THE COURT: Okay. I'm going to --

25 MR. POMERANTZ: Your Honor, we could -- if everyone

1 agrees on witness lists, we could do those by 5:00 p.m.  
2 Central on the 22nd.

3 THE COURT: Okay. Let's do that. Okay.

4 MR. POMERANTZ: But that -- but that needs to be for  
5 everybody.

6 THE COURT: Oh, it will be for everyone.

7 MR. RUKAVINA: Your Honor, no problem.

8 THE COURT: Okay. Let's --

9 MR. POMERANTZ: 5:00 p.m. Central Standard Time.

10 THE COURT: No more discussions. That'll be the  
11 ruling, okay? Everything is going to be due by 5:00 p.m.  
12 Central time on Friday, the 22nd. All right.

13 MR. POMERANTZ: Your Honor, is that our brief as  
14 well, or --

15 THE COURT: Yes.

16 MR. POMERANTZ: -- was that just the witness list?

17 THE COURT: Everything. Brief, witness list, and --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- plan mods.

20 Let me look through my notes and see if there's anything  
21 else I want to say. You know, let me do some quick math here.  
22 I know there was one other thing I wanted to say that involves  
23 math. Okay. I think my math is right here. Okay. You know,  
24 I mentioned the proliferation of lawyers. And let me just say  
25 this. We had -- we've had about 90 people on the -- showing

1 up on the video screen today -- 89, 90, 91, 92. A few, a  
2 little over 90. Okay? So let's say 90. It's been up to 95  
3 earlier. But let's pretend that 60 of those are lawyers  
4 billing by the hour. That's very conservative. Probably many  
5 more than 60. And let's assume conservatively that the  
6 average billing rate is \$700 an hour. That's probably very  
7 low, right? We probably don't have many baby lawyers on the  
8 phone. So that's a very low average. So, 60 lawyers times  
9 \$700 an hour, \$42,000 an hour this hearing has cost. And then  
10 we've been going over seven hours. So let's say seven,  
11 conservatively, times \$42,000. This hearing has cost \$294,000  
12 today. A preliminary injunction hearing. I mean, no one  
13 thinks that's chump change. I don't know, maybe some people  
14 do. This just seems like a ridiculous way to spend resources.  
15 No offense to all the wonderful lawyers, but this is just --  
16 it's crazy-town, right? It is crazy-town. So I implore you,  
17 okay, how about I use that word, I implore you to have these  
18 good-faith discussions on a pot plan.

19 Please, Mr. Dondero, I mean, don't waste people's time.  
20 \$160 million, I know that's not going to cut it. Okay? So  
21 it's going to have to be more meaningful. I just know that in  
22 my gut.

23 But having said that, I mean, I honestly mean I think a  
24 pot plan -- I think you getting your baby back is the best  
25 thing for everyone. Okay? I think it's the best thing for

1 everyone. So I want you all to --

2 MR. DONDERO: Judge, I -- Judge, I just need to  
3 interject for a second, because no one follows the big  
4 picture. We filed for bankruptcy with \$450 million of assets.  
5 \$360 million of third-party net assets, \$90 million of  
6 affiliated notes. The third-party assets are down to \$130  
7 million and falling fast.

8 MR. POMERANTZ: Your Honor, I hate to interrupt Mr.  
9 Dondero, but that is not the purpose of this hearing.

10 THE COURT: Well, --

11 MR. POMERANTZ: Mr. Dondero's statement of the assets  
12 and value is just not something that the Debtors would agree  
13 and support. I'm sure it's not something the creditors -- I  
14 think we understand what Your Honor is saying. I think the  
15 Committee understands. And Your Honor knows that the Debtor  
16 and the Committee are close to the asset values. And Mr.  
17 Dondero should be making his argument to the Debtor and the  
18 Committee, not Your Honor, in this open forum.

19 THE COURT: Okay.

20 MR. POMERANTZ: It's just not appropriate.

21 THE COURT: And I understand where you're both coming  
22 from. And he's saying that because I made the comment I made  
23 about \$160 million not being enough.

24 I've seen the evidence. I've heard the evidence at prior  
25 hearings, Mr. Dondero. We've had a lot of hearings. And I

1 remember writing that down. Wow, why did that happen? Seeing  
2 the dissipation of value. I couldn't remember the exact  
3 numbers, but I thought it was like \$500 million something and  
4 then \$300 million or whatever. And I remember Multi-Strat,  
5 that being sold, and blah, blah, blah, blah.

6 But having said that, there are a lot of causes of action  
7 that have been hinted at by the Creditors' Committee and  
8 others. So, causes of action is one of the things they are  
9 looking at when they start thinking about what's appropriate  
10 value.

11 So I just, I get where everyone is coming from. I get  
12 where everyone is coming from. But, again, let's take one  
13 more stab at this, please. Okay?

14 MR. POMERANTZ: Yeah. And Your Honor, my last  
15 comment. We're commercial people. The creditors are  
16 commercial people. I think we've done a tremendous job in  
17 being able to resolve most every one of the significant  
18 claims. I think the Court should trust the process. Mr.  
19 Dondero should trust the process.

20 And again, if there's a commercial deal to be worked out,  
21 I don't think there's anyone more than of course the Debtor  
22 and the people on the Committee, who have been litigating in  
23 many cases with Mr. Dondero and Highland for ten years, I  
24 don't think it's anyone's desire. So if there's a reasonable,  
25 rational proposal that the creditors can get behind and want

1 to engage, then there'll be a discussion. If they don't  
2 believe it's a reasonable, rational proposal, they won't.

3 THE COURT: Yes. All right. Well, I do feel very  
4 good about what I've heard about the UBS issues being worked  
5 out. I mean, we have come a long way in 15 months, even  
6 though it's frustrating to me and others. But, again, I know  
7 you all are going to do what you need to do. And I'll look  
8 for the form of order. I'm going to see you all, Mr. Dondero,  
9 including you, next Wednesday. And if there's nothing else,  
10 we stand adjourned.

11 MS. SMITH: Your Honor, I'd like to review the form  
12 of order as it regards my clients before it's submitted.

13 THE COURT: Okay.

14 MS. SMITH: If I could have a courtesy copy, please.

15 THE COURT: Yes. Well, yes. I'm not going to  
16 require 90 lawyers to get the order, but I will ask Mr.  
17 Pomerantz, Mr. Morris, make sure Ms. Smith gets it and  
18 obviously Mr. Dondero's counsel gets it. And I probably won't  
19 get it until Monday, it sounds like, but --

20 MR. POMERANTZ: That's likely.

21 THE COURT: But I'll be on the lookout for it. Okay.  
22 Thank you. We stand adjourned.

23 MS. SMITH: Thank you, Your Honor.

24 THE CLERK: All rise.

25 MR. MORRIS: Thank you, Your Honor.

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MR. BONDS: Thank you, Your Honor.  
(Proceedings concluded at 4:09 p.m.)

--oOo--

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**

**01/11/2021**

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

\_\_\_\_\_  
Date

INDEX

1		
2	PROCEEDINGS	3
3	OPENING STATEMENTS	
4	- By Mr. Morris	5
5	WITNESSES	
6	Plaintiff's Witnesses	
7	James D. Dondero	
8	- Direct Examination by Mr. Morris	19
9	- Cross-Examination by Mr. Bonds	106
10	- Redirect Examination by Mr. Morris	139
11	EXHIBITS	
12	Plaintiff's Exhibits A through Y	Received 38
13	CLOSING ARGUMENTS	
14	- By Mr. Morris	152
15	- By Mr. Lynn	155
16	- By Mr. Bonds	159
17	RULINGS	163/189
18	END OF PROCEEDINGS	204
19	INDEX	205
20		
21		
22		
23		
24		
25		

**TAB 9**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

**United States Bankruptcy Judge**

Signed January 11, 2021

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§ Adversary Proceeding No.  
§ No. 20-03190-sgj  
§  
§  
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION  
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



*L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>2</sup>

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

---

<sup>2</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.
9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

**TAB 10**

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

ATTORNEYS FOR APPELLANT JAMES DONDERO

**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.** §  
§  
v. §  
§  
**JAMES D. DONDERO,** § **Adversary No. 20-03190**  
§  
**Defendant.** §

**NOTICE OF APPEAL AS OF RIGHT OR, ALTERNATIVELY,  
NOTICE OF APPEAL WITH MOTION FOR LEAVE TO APPEAL**

NOTICE IS HEREBY GIVEN that, pursuant to rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), 28 U.S.C § 158(a), and 28 U.S.C. § 1292(a) or, alternatively, pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C § 158(a)(3), James Dondero hereby appeals to the United States District Court for the Northern District of Texas (the



“District Court”) from the *Order Granting Debtor’s Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the “Preliminary Injunction”) entered by the United States Bankruptcy Court for the Northern District of Texas on January 12, 2021. A copy of the Preliminary Injunction is attached hereto.

In the alternative, in the event that the District Court finds that leave to appeal is required, Appellant hereby moves the District Court for leave to appeal the Preliminary Injunction pursuant to Bankruptcy Rules 8002 and 8004 and 28 U.S.C. § 158(a)(3).

Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant’s rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant’s First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor’s employees. The injunction’s other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

The parties to this matter and the names and addresses of their respective attorneys are as follows:

<b>Party</b>	<b>Counsel of Record</b>
James Dondero, Defendant in the above-captioned adversary proceeding and a creditor, indirect equity holder, and party in interest in the above-captioned bankruptcy case  Appellant	D. Michael Lynn State Bar I.D. No. 12736500 John Y. Bonds, III State Bar I.D. No. 02589100 John T. Wilson, IV State Bar I.D. No. 24033344 Bryan C. Assink State Bar I.D. No. 24089009 BONDS ELLIS EPPICH SCHAFER JONES LLP 420 Throckmorton Street, Suite 1000

	<p>Fort Worth, Texas 76102                  (817) 405-6900 telephone                  (817) 405-6902 facsimile                  Email: michael.lynn@bondsellis.com                  Email: john@bondsellis.com                  Email: john.wilson@bondsellis.com                  Email: bryan.assink@bondsellis.com</p>
<p>Highland Capital Management, L.P., Plaintiff                  in the above-captioned adversary proceeding                  and the Debtor in the above-captioned                  bankruptcy case</p> <p>Appellee</p>	<p>Jeffrey N. Pomerantz (CA Bar No.143717)  <i>(pro hac vice)</i>                  Ira D. Kharasch (CA Bar No. 109084)  <i>(pro hac vice)</i>                  John A. Morris (NY Bar No. 266326)  <i>(pro hac vice)</i>                  Gregory V. Demo (NY Bar No. 5371992)  <i>(pro hac vice)</i>                  PACHULSKI STANG ZIEHL &amp; JONES LLP                  10100 Santa Monica Blvd., 13th Floor                  Los Angeles, CA 90067                  Telephone: (310) 277-6910                  Email:jpomerantz@pszjlaw.com                  ikharasch@pszjlaw.com                  jmorris@pszjlaw.com                  gdemo@pszjlaw.com</p> <p>and</p> <p>Melissa S. Hayward (TX Bar No. 24044908)                  Zachery Z. Annable (TX Bar No. 24053075)                  HAYWARD PLLC                  10501 N. Central Expy, Ste. 106                  Dallas, Texas 75231                  Telephone: (972) 755-7100                  Email:MHayward@HaywardFirm.com                  ZAnnable@HaywardFirm.com</p>

Dated: January 12, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
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Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR APPELLANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 12, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

  
United States Bankruptcy Judge

Signed January 11, 2021

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§ Adversary Proceeding No.  
§ No. 20-03190-sgj  
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§  
§  
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION  
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>2</sup>

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

---

<sup>2</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.
9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

TAB 11

D. Michael Lynn  
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John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
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ATTORNEYS FOR APPELLANT JAMES DONDERO

**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.** §  
§  
v. §  
§ **Adversary No. 20-03190**  
**JAMES D. DONDERO,** §  
§  
**Defendant.** §

**APPELLANT JAMES DONDERO’S MOTION FOR LEAVE TO APPEAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

James D. Dondero (“Appellant”), the defendant in the above-captioned adversary proceeding and appellant in connection with the Notice of Appeal filed concurrently herewith, hereby, in the alternative and in the event the District Court finds that leave to appeal the

Preliminary Injunction<sup>1</sup> is required, files this *Motion for Leave to Appeal* (the “Motion”) pursuant to Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and 28 U.S.C. § 158(a)(3). In support thereof, Appellant respectfully represents as follows:

## I. BACKGROUND

1. On October 16, 2019 (the “Petition Date”), Highland Capital Management, L.P. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. trustee in Delaware.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s Bankruptcy Case to this Court [Docket No. 186].

4. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

5. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor’s general partner, Strand Advisors, Inc. (the “Board”). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor’s Chief Executive Officer.

6. On December 7, 2020, the Debtor commenced this adversary proceeding by filing

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<sup>1</sup> As defined below.

*Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Dkt. 1] (the “Complaint”).

7. Also on December 7, 2020, the Debtor filed *Plaintiff Highland Capital Management, L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero* [Adv. Dkt. 2] (the “TRO Motion”).

8. On December 10, 2020, this Court conducted a hearing and granted the TRO Motion. Later that day, the Court entered the *Order Granting Debtor’s Motion for a Temporary Restraining Order Against James Dondero* [Adv. Dkt. 10] (the “TRO”).

9. On December 11, 2020, this Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Adv. Dkt. 18] (the “Scheduling Order”).

10. On December 11, 2020, the Court issued the summons of the Complaint. Defendant’s deadline to file his answer or other response to the Complaint is Monday, January 11, 2021.

11. On December 11, 2020, the Court set the hearing on Debtor’s motion for a preliminary injunction for January 4, 2021 at 1:30 p.m.

12. On December 16, 2020, the Defendant filed his Emergency Motion to Modify the TRO, through which the Defendant was seeking to have the Court modify the terms of the TRO so that Defendant could speak with the Board directly to further advocate for his Pot Plan that would, if adopted, see the Debtor continue to operate as a going concern.

13. The motion was thereafter set by the Court for hearing on January 4, 2021 at 1:30 p.m. Because of the scheduled hearing date, the Defendant believed that the motion was rendered moot and he therefore withdrew the motion on December 23, 2020.

14. On January 7, 2021, Dondero filed *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Dkt. 52].

15. On January 8, 2021, the Court conducted a hearing on Debtor's motion for a preliminary injunction and found that a preliminary injunction should be entered against Appellant.

16. On January 11, 2021, Appellant filed his answer to the Complaint.

17. On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* [Adv. Dkt. 59] (the "Preliminary Injunction"). A true and correct copy of the Preliminary Injunction is attached hereto as "Exhibit A."

18. Among other things, the Preliminary Injunction enjoins and restrains Appellant from "(a)communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication, (b)making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting, (c)communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct")."

19. The Preliminary Injunction also purports to restrain Appellant from taking other actions, including "from causing, encouraging, or conspiring with (a)any entity owned or controlled by him, and/or (b)any person or entity acting with him or on his behalf, to, directly or

indirectly, engage in any Prohibited Conduct.”

20. The Preliminary Injunction also prevents Appellant from speaking with two former employees of the Debtor and from entering Debtor’s office space or using any of the Debtor’s computer, email, or information systems.

21. Finally, during the preliminary injunction hearing, the Court ordered Appellant to attend all future hearings in the Bankruptcy Case despite no party having requested this relief in connection with the Motion or during the hearing.

## **II. RELIEF REQUESTED AND BASIS FOR RELIEF**

22. In the alternative, and to the extent the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court should grant Appellant leave to appeal the Preliminary Injunction pursuant to 28 U.S.C. §158(a)(3) and Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure.

23. Good cause exists to grant Appellant leave to appeal the Preliminary Injunction. The injunction, which effectively permanently fixes Appellant’s rights in the bankruptcy case, is overbroad, nonspecific, and inconsistent with applicable law. Among other things, the injunction violates Appellant’s First Amendment rights by prohibiting all communication of any nature between Appellant and the Debtor’s employees. The injunction’s other restrictions are also overbroad, unclear as to the specific acts restrained, and potentially unlimited in scope. Granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by or in the Preliminary Injunction.

24. Given the broad restrictions contained in the Preliminary Injunction, including the restriction on Appellant’s First Amendment rights and the potentially limitless scope of the injunction, relief from the restrictions as soon as practicable is warranted.

### CONCLUSION

For the foregoing reasons, Appellant respectfully requests that, in the event that the District Court finds that leave to appeal the Preliminary Injunction is required, the District Court (i) enter an order granting this Motion, (ii) provide Appellant with leave to appeal the Preliminary Injunction, (iii) consider the appeal and relief requested as soon as practicable, and (iv) provide Appellant such other and further relief to which he may be justly entitled.

Dated: January 13, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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State Bar I.D. No. 12736500  
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State Bar I.D. No. 02589100  
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**ATTORNEYS FOR APPELLANT JAMES DONDERO**

### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 13, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

**United States Bankruptcy Judge**

Signed January 11, 2021

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§ Adversary Proceeding No.  
§ No. 20-03190-sgj  
§  
§  
§  
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION  
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>2</sup>

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

---

<sup>2</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.
9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

TAB 12

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*Counsel for Highland Capital Management, L.P.*

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

-----	§	
In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
-----	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	No. 20-3190-sgj11
vs.	§	
	§	
JAMES DONDERO,	§	
	§	
Defendant.	§	
_____		

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



---

JAMES DONDERO,	§	
Appellant,	§	Civil Action No.
v.	§	3:21-cv-00132-E
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Appellee.	§	

---

**DEBTOR’S OPPOSITION TO JAMES DONDERO’S MOTION FOR  
LEAVE TO APPEAL PRELIMINARY INJUNCTION**

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TO: THE HONORABLE ADA BROWN, UNITED STATES DISTRICT JUDGE:

Plaintiff Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor” or “Appellee”) and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby submits this opposition (the “Opposition”) to *Appellant James Dondero’s Motion for Leave to Appeal* [Docket No. 2]<sup>2</sup> (the “Motion”) and *Appellant James Dondero’s Emergency Motion for Expedited Appeal* [Docket No. 3] (the “Motion to Expedite”) (together, the “Motions”), filed by James Dondero (“Appellant”), in connection with the Bankruptcy Court’s *Order Granting Debtor’s Motion for a Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 59]<sup>3</sup> (the “Preliminary Injunction”). Appellee fully incorporates by reference its contemporaneously filed *Brief in Opposition to Dondero’s Motion for Leave to Appeal Preliminary Injunction* (the “Brief”) and would show unto the Court as follows:

**I. Relief Requested**

1. By this Opposition, and based on the facts and arguments set forth more fully in Appellee’s Brief, Appellee respectfully requests that the Court enter an Order denying Appellant’s

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<sup>2</sup> Refers to the civil action docket maintained by the United States District Court for the Northern District of Dallas (the “District Court”).

<sup>3</sup> Refers to the Adversary Proceeding docket maintained in the Highland Bankruptcy Case.

Motions seeking leave to appeal the Preliminary Injunction and for an expedited appeal.

WHEREFORE, PREMISES CONSIDERED, Appellee respectfully requests that the Court enter an order (i) denying Appellant's Motions in their entirety, and (ii) granting Appellee such other and further relief as is just and equitable.

Dated: January 27, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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ATTORNEYS FOR APPELLANT JAMES DONDERO

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

<b>In re:</b>	§	<b>Case No. 19-34054</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	

---

<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff.</b>	§	
	§	
<b>v.</b>	§	<b>Adversary No. 20-03190</b>
	§	
<b>JAMES D. DONDERO,</b>	§	
	§	
<b>Defendant.</b>	§	

---

<b>JAMES DONDERO,</b>	§	
	§	
<b>Appellant,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>Civil Action No.</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>3:21-cv-00132-E</b>
	§	
<b>Appellee.</b>	§	

**APPELLANT JAMES DONDERO’S REPLY IN SUPPORT OF  
 EMERGENCY MOTION FOR EXPEDITED APPEAL  
AND MOTION FOR LEAVE TO APPEAL**



TO THE HONORABLE ADA BROWN,  
UNITED STATES DISTRICT JUDGE:

James D. Dondero (“Appellant”), the defendant in the above-captioned adversary proceeding and appellant in connection with this appeal, hereby files *Appellant James Dondero’s Reply in Support of Emergency Motion for Expedited Appeal and Motion for Leave to Appeal*<sup>1</sup> in response to the *Debtor’s Opposition to James Dondero’s Motion for Leave to Appeal Preliminary Injunction* [Docket No. 5] and Brief in Support [Docket No. 6]. In support thereof, Appellant respectfully represents as follows:

**A. The Preliminary Injunction Should Be Appealable as of Right**

1. In this case, applicable law and the broad, unclear, and potentially unlimited scope and permanent nature of the Preliminary Injunction demonstrate that the Preliminary Injunction should be appealable as of right.

2. While the Fifth Circuit does not appear to have spoken on whether a party may appeal a grant of a preliminary injunction as of right, some Texas district courts have held that a party may appeal a preliminary injunction as of right.

3. “Relying on 28 U.S.C § 1292, at least some courts have held that a party may appeal as of right the grant or denial of an injunction by the bankruptcy court.” *Boyd v. Akard*, 2012 U.S. Dist. LEXIS 4753, \*6-7 (W.D. Tex. January 17, 2012). (citing *In re Midstate Mortg. Investors Group*, Civ. A. No. 06-2581, 2006 U.S. Dist. LEXIS 82474, 2006 WL 3308585, at \*4-5 (D.N.J. Nov. 6, 2006) (“where the orders entered in the bankruptcy court are in the form of injunctive relief, the district court, sitting as an appellate court, is authorized under § 1292(a) to hear the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in *Appellant James Dondero’s Emergency Motion for Expedited Appeal* [Docket No. 3] (the “Motion”).

appeal without the need to resort to discretion to grant leave to appeal”). *See also In re Reliance Acceptance Group, Inc.*, 235 B.R. 548 (D. Del. 1999).

4. Section 1292(a)(1) provides that “the court of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where direct review may be had in the Supreme Court.” 28 U.S.C. § 1292(a)(1).

5. Here, like other District Courts, including two in Texas, the Court should apply section 1292(a) by analogy to allow the appeal of the preliminary injunction as of right just as the court of appeals would in an appeal of an injunction from a district court. *See Boyd v. Akard*, 2012 U.S. Dist. LEXIS 4753, \*6-7 (W.D. Tex. January 17, 2012); *In re Reserve Prod., Inc.*, 190 B.R. 287 (E.D. Tex. 1995) (“The wiser exercise of discretion is to apply § 1292(a)(1) by analogy and allow the appeal of the preliminary injunction.”). *See also In re Reliance Acceptance Group, Inc.*, 235 B.R. 548 (D. Del. 1999).

6. Moreover, allowing an appeal as of right makes sense in this case because Appellant’s rights will be severely and potentially permanently impacted by the preliminary injunction and he will have no remedy at law or any opportunity for any court to review the bankruptcy court’s preliminary injunction order without this appeal.

7. In addition, the Preliminary Injunction may effectively be turned into a permanent injunction through the Debtor’s Fifth Amended Plan of Reorganization (as modified) (the “Plan”) because the Plan contains a provision that provides for the continuation of preconfirmation injunctions which extends and continues injunctions entered during the bankruptcy case, including this Preliminary Injunction, post-confirmation. Specifically, the Plan provides that “all injunctions

and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms,”<sup>2</sup> which could potentially extend the vague, overbroad, and unclear Preliminary Injunction into perpetuity. If that is the case, then the Debtor can effectively turn the Preliminary Injunction into a final judgment through the Plan, without the need to pursue the adversary proceeding to completion (it is conceivable that the Debtor may take the position that a hearing on the permanent injunction is no longer necessary as a result of this provision of the Plan). In that instance, the Preliminary Injunction is effectively a final judgment and should be appealable as of right on that basis as well.

**B. Even if the Preliminary Injunction is Not Appealable as of Right, Leave to Appeal Should be Granted**

8. Even if the Preliminary Injunction is not appealable as of right, there is good cause to grant Appellant leave to appeal the Preliminary Injunction.

9. 28 U.S.C. § 158 permits interlocutory appeals to this Court from the bankruptcy court. It expressly provides that “the district courts of the United States shall have jurisdiction to hear appeals . . . (a)(3) with leave of the court, from other interlocutory orders and decrees; and with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.”

10. “Section 158(a) does not provide a standard for a district court to use in determining whether to grant leave to appeal; however, the courts generally have applied the standard provided under 28 U.S.C. § 1292(b) for interlocutory appeals from district court orders to a court of appeals.” *Golden Rests., Inc. v. Denar Rests., LLC (In re Denar Rests., LLC)*, No. 4:09-CV-616-A, 2010 U.S. Dist. LEXIS 3317, at \*35-36 (N.D. Tex. Jan. 14, 2010) (citing *Ichinose v. Homer*

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<sup>2</sup> See Bankr. Dkt. No. 1808, Debtor’s Fifth Amended Plan of Reorganization (as modified), Art. IX, Sec. G (pg. 58 of 66).

*Nat'l Bank*, 946 F.2d 1169, 1177 (5th Cir. 1991)). That standard includes the following elements: “(1) the existence of a controlling issue of law as to the interlocutory order, (2) as to which there is substantial ground for difference of opinion, and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” *Id.*; 28 U.S.C. § 1292(b).

11. But with respect to an appeal of an order granting a preliminary injunction, however, “[c]ourts have held that the application of § 158 should be guided by § 1292(a), and thus generally permit interlocutory appeals of preliminary injunctions.” *See Boyd v. Akard*, 2012 U.S. Dist. LEXIS 4753, \*6-7 (W.D. Tex. January 17, 2012). (citing *In re Reserve Prod., Inc.*, 190 B.R. 287 (E.D. Tex. 1995) (“The wiser exercise of discretion is to apply § 1292(a)(1) by analogy and allow the appeal of the preliminary injunction.”)); *Pipkin v. Jvm Operating, L.C.*, 197 B.R. 47, 52 (E.D. Tex. 1996) (same).

12. Here, like other District Courts in Texas, the Court should apply section 1292(a) by analogy to allow the appeal of the preliminary injunction. *See In re Reserve Prod., Inc.*, 190 B.R. 287 (E.D. Tex. 1995) (“The wiser exercise of discretion is to apply § 1292(a)(1) by analogy and allow the appeal of the preliminary injunction.”).

13. In the event the Court finds that the standard provided by section 1292(b) should apply to appeals of a grant of a preliminary injunction, the Court should grant leave to appeal here because there is exists a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

14. First, it is difficult to dispute that there exists a controlling question of law as to the Preliminary Injunction. “[A]ll that must be shown in order for a question to be 'controlling' is that resolution of the issue on appeal could materially affect the outcome of litigation in the district

court.” *Arizona v. Ideal Basic Indus. (In re Cement Antitrust Litigation)*, 673 F.2d 1020, 1026 (9th Cir. 1982); *Admiral Ins. Co. v. Willson (In re Cent. La. Grain Coop., Inc.)*, 489 B.R. 403, 411 (W.D. La. 2013); *see also Aktiebolag v. Waukesha Cutting Tools, Inc.*, 640 F. Supp. 1139, 1141 (E.D. Wis. 1986). “[A] controlling question of law—although not consistently defined—at the very least means a question of law the resolution of which could materially advance the ultimate termination of the litigation—thereby saving time and expense for the court and the litigants.” *Ryan v. Flowsolve Corp.*, 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006).

15. Here, the resolution of this appeal will certainly materially affect the outcome of litigation in the bankruptcy court and save time and expense for the court and litigants. First, the litigation itself is solely and entirely based on the Debtor’s request for a preliminary, and eventually, a permanent injunction.<sup>3</sup> There are no other claims for relief in this adversary proceeding. The determination of whether the injunction is allowed in the first instance, and whether the injunction as entered satisfies applicable legal standards, clearly will materially affect the outcome of the litigation as these are the only issues involved. For example, if this Court finds that the injunction is over broad, lacking in specificity, vague, and unclear as to the acts restrained, the litigation in the bankruptcy court will be impacted as the injunction may be dissolved or otherwise modified. There is a substantial difference of opinion—as demonstrated among other things by the parties’ dispute—that (i) cause existed for the injunction in the first instance; and (ii) whether the provisions of the injunction satisfy applicable legal standards, including Rule 65 of the Federal Rules of Civil Procedure. In addition, the issue as to whether the injunction satisfies applicable standards, including, for example, by being clear and specific, is essentially a

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<sup>3</sup> *See* Complaint for Injunctive Relief [Adv. Dkt. 1] and Motion for Preliminary Injunction and Temporary Restraining Order [Adv. Dkts. 2 and 6].

controlling issue of law that this Court can determine by its review of the Preliminary Injunction and the relevant legal authority.

16. The cases cited by Appellee in its response are vastly different than the case before the Court as those cases do not deal with whether there is cause to appeal a *preliminary injunction*.

17. Here, unlike in situations where a party seeks to appeal an interlocutory order in the context of complex litigation or in the middle of a bankruptcy case, the appeal of the preliminary injunction will not delay the prosecution of the adversary proceeding because the only cause of action in the adversary proceeding is for preliminary and permanent injunctive relief. This is not a “piecemeal appeal” of any sort. Nor will the appeal of the preliminary injunction delay the bankruptcy case or reorganization, as confirmation is set for February 2, 2021. Rather, a favorable resolution of these issues will avoid protracted and expensive litigation by clarifying the propriety and/or scope of the Preliminary Injunction that could alleviate the parties from being involved in multiple proceedings and multiple appeals, including with respect to the pending Contempt Motion. *See Total Benefit Servs., Inc. v. Grp. Ins. Admin., Inc.*, U.S. Dist. LEXIS 4362, at \*5 (E.D. La. Mar. 25, 1993) (“Resolution of these issues could materially affect the outcome of the litigation. . . . Furthermore, a favorable resolution of these issues will avoid protracted and expensive litigation.”).

18. Finally, public policy and due process support Appellant’s request for leave to appeal the Preliminary Injunction. If leave to appeal is not granted, Appellant’s rights will be permanently impacted by the injunction and he will have no remedy at law or any opportunity for any court to review the bankruptcy court’s preliminary injunction order. The Debtor’s Fifth Amended Plan of Reorganization (as modified) provides that “all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force

and effect in accordance with their terms,”<sup>4</sup> which may effectively extend the vague, overbroad, and unclear Preliminary Injunction into perpetuity and has the effect of potentially turning the Preliminary Injunction into a final judgment. “As a policy matter, the rulings of a non-Article III bankruptcy court should not be more insulated from appellate review than the rulings of an Article III district court.” *Clark v. Sanders (In re Res. Prod.)*, 190 B.R. 287, 290 (E.D. Tex. 1995).

### **C. Considering this Appeal on an Expedited Basis is Warranted**

19. If there exists any matter which merits an expedited appeal, it is this one.

20. The Debtor is using the broad, undefined, potentially unlimited and non-specific injunction as a weapon to threaten Dondero and his related entities to prevent them from exercising their legal rights in this case and going forward as the Debtor liquidates.

21. This threat isn’t a mere hypothetical. The Debtor has *already* moved for contempt against Appellant for actions that do not explicitly violate the TRO but the Debtor has asserted fall under the vague and nonspecific provisions of the TRO, including the provisions preventing “direct or indirect” interference with Debtor’s business and those for violations of the automatic stay provision of 11 U.S.C. § 362(a).

22. Specifically, the Contempt Motion seeks to hold Appellant in contempt of the TRO for (i) replacing a cell phone and disposing of an old cell phone, despite the TRO containing no applicable provisions restricting such behavior and there being no pending discovery at the time the phone was replaced; (ii) accessing the Debtor’s nearly empty office space (which he was arguably entitled to do under certain shared services agreements) simply to appear for a deposition noticed by the *Debtor*, even though the Debtor did not request to restrict his access until nearly two weeks *after* the TRO was entered; and (iii) two letters exchanged between counsel for two

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<sup>4</sup> See Bankr. Dkt. No. 1808, Debtor’s Fifth Amended Plan of Reorganization (as modified), Art. IX, Sec. G (pg. 58 of 66).

third party entities to counsel for the Debtor that made certain requests, which requests the Debtor rejected and for which no additional action was taken by these third parties or Appellant himself.

23. And there is more evidence that the Contempt Motion is being used as a weapon and that the Debtor did not file the contempt motion to seek redress for legitimate, clear violations of a court's order. The Debtor filed the Contempt Motion on the *eve* of the hearing on the Preliminary Injunction—and sought to have the Contempt Motion heard that very same day, on less than 24 hours' notice!<sup>5</sup>

24. This imminent threat of contempt for a vague, non-specific and unlawful injunction is all the more reason to expedite the appeal of this case. The Debtor's actions indicate that it has interpreted the TRO so broadly as to make it impossible for the Appellant to know what actions he can or cannot take. The Preliminary Injunction is substantially similar to the TRO and identical in the particular areas of concern presented to the Court here. Given how the Debtor has moved for contempt based on the non-specific, broad, and unclear provisions of the TRO, there is an imminent danger that the Debtor will broadly interpret the terms of the Preliminary Injunction the same way, all without fair notice to the Appellant. With the Contempt Motion set for hearing next week, February 5, 2021,<sup>6</sup> the Court should consider this appeal as soon as possible.

25. Further, the trial on the Debtor's request for a permanent injunction is not set until May 2021. If the injunction remains in place, Appellant will be bound by the Preliminary Injunction for this entire period, subjecting Appellant to the uncertainties of the terms of the injunction and the threat of contempt for months. In addition, during this period, Appellant may

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<sup>5</sup> See Motion for Expedited Hearing [Adv. Dkt. 51].

<sup>6</sup> See Notice of Hearing [Adv. Dkt. 74]. On January 27, 2021, Appellant filed with the Bankruptcy Court an Emergency Motion to Continue the Hearing on the Contempt Motion [Adv. Dkt. 75], requesting that the Bankruptcy Court continue the hearing on the Contempt Motion while this appeal proceeds or, alternatively, requesting that the hearing be continued to the following week to allow Appellant sufficient time to present his defenses and case in chief. As of the filing of this reply, such motion has not been ruled on.

not be able to talk to the Debtor's employees and former employees (some of which are his friends), despite the fact that the vast majority of the Debtor's employees are to be terminated imminently under the Debtor's liquidation Plan.

26. If the Court is inclined to set a hearing on Appellant's Motion, Appellant respectfully requests that the Court set the matter as soon as possible, especially because the Contempt Motion is set for February 5, 2021.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that the District Court consider the Motion on an emergency basis and (i) enter an order granting the Motion, (ii) allow this appeal, expedite the consideration of this appeal, and resolve the appeal as promptly as possible, and (iii) provide Appellant such other and further relief to which he may be justly entitled.

Dated: January 28, 2021

Respectfully submitted,

/s/ Bryan C. Assink

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**ATTORNEYS FOR APPELLANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 28, 2021, a true and correct copy of the foregoing document was served via direct email and the Court's CM/ECF system on counsel for the Debtor-Appellee as listed below and on all other parties requesting or consenting to such service in this case.

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*/s/ Bryan C. Assink* \_\_\_\_\_  
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TAB 14

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

In Re: HIGHLAND CAPITAL	§	
MANAGEMENT, LP,	§	
Debtor.	§	
	§	Bankruptcy Case No. 19-34054-SGJ11
JAMES DONDERO,	§	
Appellant,	§	Adversary No.: 20-03190-sgj
	§	
v.	§	Civil Action No. 3:21-CV-0132-E
	§	
HIGHLAND CAPITAL MANAGEMENT LP,	§	
Appellee.	§	

**MEMORANDUM OPINION AND ORDER**

Before the Court is Appellant James Dondero’s Motion for Leave to Appeal (Doc. No. 2-1). Appellant seeks to appeal a bankruptcy court order granting a preliminary injunction against him. Having carefully considered the motion for leave to appeal, the parties’ briefing, and applicable law, the Court finds the motion for leave to appeal should be DENIED.

In October 2019, debtor Highland Capital Management, L.P. filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. The petition was filed in bankruptcy court for the District of Delaware, but later was transferred to this district. Appellant alleges he is “a creditor, indirect equity holder, and party in interest” in the bankruptcy case. In December 2020, Debtor initiated an adversary proceeding by filing a complaint seeking injunctive relief against Appellant. Upon Debtor’s motion, and after a hearing, the bankruptcy court issued a preliminary injunction order. Among other things, the preliminary injunction enjoins Appellant from communicating with any Board member unless counsel for Appellant and Debtor are included in the communication; from physically or virtually entering Debtor’s offices without the prior written



permission of Debtor's counsel; and from communicating with two specific individuals, former employees of Debtor, unless otherwise ordered by the court. In addition, Appellant must attend all future hearings in the bankruptcy case via video unless otherwise ordered by the court. The order remains in effect until the date that any plan of reorganization or liquidation resolving Debtor's case becomes effective or unless otherwise ordered by the bankruptcy court. Appellant filed a notice of appeal and an alternative motion for leave to appeal.

Citing 28 U.S.C. § 158(a) and 28 U.S.C. § 1292(a), Appellant asserts that he may appeal the bankruptcy court's preliminary injunction as a matter of right. Appeals from bankruptcy courts are governed by 28 U.S.C. § 158. It permits district courts to hear appeals from final bankruptcy judgments and, with leave of court, other interlocutory orders. Section 158(a)(3) expressly requires leave of the district court to appeal an interlocutory bankruptcy court order. 28 U.S.C. § 158(a)(3); *see* FED. R. BANKR. P. 8004(a).

Section 158(a)(3) does not provide a standard for determining when to grant leave. District courts have generally looked to the standard that applies for circuit court review of interlocutory district court orders, which is found in 28 U.S.C. § 1292. *See In re First Rep. Grp. Realty, LLC*, No. M47(SAS), 2010 WL 882986, at \*1 (S.D.N.Y. Mar. 2, 2010). But there is a difference of opinion regarding whether to apply section 1292(a) or 1292(b) when the interlocutory order involved is a preliminary injunction. *See In re Reserve Prod.*, 190 B.R. 287, 289 (E.D. Tex. Oct. 3, 1995). The Fifth Circuit has left this issue open. *See Ichinose v. Homer National Bank (In re Ichinose)*, 946 F.2d 1169, 1177 (5th Cir. 1991). Under 1292(a), a court of appeals has jurisdiction over an interlocutory order of a district court that grants an injunction. 28 U.S.C. § 1292(a). Under 1292(b), an interlocutory order is appealable when it involves "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from

the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b).

Section 158(a) plainly gives district courts discretion over whether to accept appeals from interlocutory bankruptcy court orders. Thus, “[i]t would make little sense for the bankruptcy appeals statute to group preliminary injunctions with other interlocutory orders but intend for ‘leave to appeal’ these injunctions to be granted as of right.” *First Rep. Grp.*, 2010 WL 882986, at \*1 (quoting *In re Quigley Co.*, 323 B.R. 70, 77 (S.D.N.Y. 2005)); see *In re Goldberg*, No. 16 C 6993, 2016 WL 6070364, at \*3 (N.D. Ill. Oct. 17, 2016). Requiring leave in all instances is more faithful to the plain language of section 158(a)(3). *In re Goldberg*, 2016 WL 6070364, at 3. The Court concludes that any interlocutory appeal under section 158(a) requires leave of the district court and that such an appeal must meet the requirements set out in section 1292(b). See *In re Ichinose*, 946 F.2d at 1177 (stating, in case involving interlocutory bankruptcy court order that was not preliminary injunction, “the vast majority of district courts faced with the problem have adopted the standard under 28 U.S.C. § 1292(b.)”); but see *In re Reserve Prod.*, 190 B.R. at 290 (“As a policy matter, the rulings of a non-article III bankruptcy court should not be more insulated from appellate review than the rulings of an Article III district court.”).

In his motion for leave, Appellant argues that good cause exists to grant leave to appeal. He contends the injunction effectively permanently fixes his rights in the bankruptcy case. He further asserts the injunction is “overbroad, nonspecific, and inconsistent with applicable law” and violates his First Amendment rights. According to Appellant, granting leave to appeal will advance the litigation and allow for prompt review of the legal questions raised by the preliminary injunction. Debtor responds that appeals of interlocutory bankruptcy court orders are strongly disfavored and that interlocutory appeal is inappropriate under section 1292(b). Appellant argues

in his reply for the first time that if the Court applies 1292(b), the standard has been met because a controlling question of law has been presented: a question of law which could materially advance the ultimate termination of the litigation.

As stated, under section 1292(b), the interlocutory order must (1) involve a controlling issue of law and (2) present a question upon which there is substantial ground for difference of opinion, and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). All three of the statutory criteria must be met before an interlocutory appeal is proper. See *Arparicio v. Swan Lake*, 643 F.2d 1109, 1110 n.2 (5th Cir. 1981). “[T]he Fifth Circuit disfavors interlocutory appeals” and leave to appeal is “sparingly granted.” See *Odle v. Wal-Mart Stores Inc.*, No. 3:11-CV-2954-O, 2013 WL 66035, at \*2 (N.D. Tex. Jan. 7, 2013) (citing *United States v. Garner*, 749 F.2d 281, 286 (5th Cir. 1985)).

Appellant asserts he has presented a controlling question of law because the issue on appeal could materially affect the outcome of litigation in the bankruptcy court and save time and expense for the court and litigants. Appeals under 1292(b) “were intended and should be reserved, for situations in which the court of appeals can rule on a pure, controlling question of law without having to delve beyond the surface of the record in order to determine the facts.” *Oasis Res., LLC v. Carbonite, Inc.*, No. 4:10-CV-435, 2015 WL 12829617, at \*3 (E.D. Tex. June 11, 2015) (quoting *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004)). A review of the preliminary injunction in this case would involve a fact-intensive analysis, not consideration of a pure question of law.

Accordingly, this Court finds Appellant has not sufficiently demonstrated the bankruptcy court order involves a controlling question of law. Because there is no controlling issue of law involved, the Court need not reach the issues of whether the preliminary injunction involves

questions with a substantial ground for difference of opinion or whether an immediate appeal would materially advance the ultimate termination of the litigation. *See* 28 U.S.C. §§ 158(a)(3); 1292(b).

Appellant's Motion for Leave to Appeal is **DENIED**.

**SO ORDERED.**

Signed February 11, 2021.

A handwritten signature in black ink, appearing to read "Ada Brown", written in a cursive style.

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ADA BROWN  
UNITED STATES DISTRICT JUDGE