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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al., Defendants.	§	Case No. 3:21-cv-00881-X (Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)

APPENDIX IN SUPPORT OF MOTION TO DEEM THE DONDERO ENTITIES VEXATIOUS LITIGANTS AND FOR RELATED RELIEF

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Ex.	Description	Appx. #
1.	Summary Litigation Chart	1-16
2.	*Judgment*, Index No.: 650097/2009, NYSCEF Doc. No. 646 (N.Y. Sup. Feb. 10, 2020)	17-21
3.	*Decision and Order After Trial*, Index No. 650097/2009, NYSCEF Doc. No. 650 (N.Y. Sup. Sept. 14, 2020).	22-62
4.	Proof of Claim No. 190 (UBS Securities LLC, UBS AG, London Branch, Jessup Holdings LLC, Muck Holdings LLC)	63-184
5.	Proof of Claim No. 191 (UBS Securities LLC, UBS AG, London Branch, Jessup Holdings LLC, Muck Holdings LLC)	185-306
6.	Transcript of Hearing Held May 17, 2019, Daugherty v. Highland Capital Management, L.P., C.A. No. 2018-0488-MTZ (Del. Ch. May 17, 2019)	307-404
7.	*Partial Final Award,* Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P., Case No. 01-16-0002-6927 (March 6, 2019)	405-467
8.	*Final Award*, Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P., Case No. 01-16-0002-6927 (April 29, 2019)	468-491
9.	Transcript of Hearing Held August 8, 2022, Adv. Proc. No. 21-3020 (Bankr. N.D. Tex. Aug. 8, 2022)	492-625
10.	Proof of Claim No. 70 (Hunter Mountain Trust)	626-638
11.	Proof of Claim No. 95 (Highland Capital Management Fund Advisors, L.P.)	639-657
12.	Proof of Claim No. 98 (Highland Global Allocation Fund)	658-663
13.	Proof of Claim No. 100 (Highland Opportunistic Credit Fund)	664-669
14.	Proof of Claim No. 101 (Highland Tax-Exempt Fund)	670-675
15.	Proof of Claim No. 102 (Highland Energy MLP Fund)	676-681
16.	Proof of Claim No. 103 (NexPoint Strategic Opportunities Fund)	682-687

Ex.	Description	Appx. #
17.	Proof of Claim No. 104 (NexPoint Advisors, L.P.)	688-702
18.	Proof of Claim No. 105 (Highland Income Fund HFRO)	703-708
19.	Proof of Claim No. 106 (Highland Funds I)	709-714
20.	Proof of Claim No. 107 (NexPoint Capital, Inc.)	715-720
21.	Proof of Claim No. 108 (NexPoint Advisors, L.P.)	721-763
22.	Proof of Claim No. 109 (Highland Fixed Income Fund)	764-769
23.	Proof of Claim No. 110 (Eagle Equity Advisors, LLC	770-775
24.	Proof of Claim No. 111 (Advisors Equity Group, LLC)	776-781
25.	Proof of Claim No. 112 (Highland Long/Short Equity Fund)	782-787
26.	Proof of Claim No. 113 (The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust)	788-793
27.	Proof of Claim No. 114 (Highland Funds II)	794-799
28.	Proof of Claim No. 115 (Highland Socially Responsible Equity Fund)	800-805
29.	Proof of Claim No. 116 (Highland Healthcare Opportunities Fund)	806-811
30.	Proof of Claim No. 117 (NexPoint Discount Strategies Fund)	812-817
31.	Proof of Claim No. 118 (NexPoint Real Estate Strategies Fund)	818-823
32.	Proof of Claim No. 119 (Highland Capital Management Fund Advisors, L.P.)	824-838

Ex.	Description	Appx. #
33.	Proof of Claim No. 120 (The Get Good Trust)	839-844
34.	Proof of Claim No. 121 (NexPoint Healthcare Opportunities Fund)	845-850
35.	Proof of Claim No. 122 (Highland iBoxx Senior Loan ETF)	851-856
36.	Proof of Claim No. 123 (NexPoint Event-Driven Fund)	857-862
37.	Proof of Claim No. 124 (NexPoint Energy and Material Opportunities Fund)	863-868
38.	Proof of Claim No. 125 (Highland Floating Rate Fund)	869-874
39.	Proof of Claim No. 126 (Highland Total Return Fund)	875-880
40.	Proof of Claim No. 127 (Highland Small-Cap Equity Fund)	881-886
41.	Proof of Claim No. 128 (The Get Good Non-Exempt Trust No. 1, Individually and as Successor-In-Interest of the Canis Minor Trust)	887-892
42.	Proof of Claim No. 129 (The Get Good Non-Exempt Trust No. 2, Individually and as Successor-In-Interest of the Canis Minor Trust)	893-898
43.	Proof of Claim No. 130 (NexPoint Latin America Opportunities Fund)	899-904
44.	Proof of Claim No. 131 (The Dugaboy Investment Trust)	905-910
45.	Proof of Claim No. 132 (Highland Merger Arbitrage Fund)	911-916
46.	Proof of Claim No. 133 (CLO Holdco, Ltd.)	917-987
47.	Proof of Claim No. 138 (James D. Dondero)	988-993
48.	Proof of Claim No. 140 (NexPoint Capital, Inc.)	994-999

Ex.	Description	Appx. #
49.	Proof of Claim No. 141 (James D. Dondero)	1000-1005
50.	Proof of Claim No. 142 (James D. Dondero)	1006-1011
51.	Proof of Claim No. 145 (James Dondero, as the successor-in-interest to the Canis Major Trust)	1012-1017
52.	Proof of Claim No. 146 (HCRE Partner, LLC)	1018-1023
53.	Proof of Claim No. 151 (NexVest, LLC)	1024-1035
54.	Proof of Claim No. 152 (Hunter Mountain Trust)	1036-1045
55.	Proof of Claim No. 175 (Highland Capital Management Services, Inc.)	1046-1051
56.	Proof of Claim No. 176 (Highland Capital Management Services, Inc.)	1052-1057
57.	Proof of Claim No. 177 (The Dugaboy Investment Trust)	1058-1063
58.	Proof of Claim No. 178 (NexBank SSB)	1064-1072
59.	Proof of Claim No. 188 (James D. Dondero)	1073-1078
60.	Proof of Claim No. 198 (CLO Holdco, Ltd.)	1079-1149
61.	Proof of Claim No. 254 (CLO HoldCo, Ltd.)	1150-1211
62.	Proof of Claim No. 239 (Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.)	1212-1224
63.	Transcript of Hearing Held April 13, 2022 (PM), Adv. Proc. No. 21-3010 (Bankr. N.D. Tex. Apr. 13, 2022)	1225-1406
64.	Transcript of Hearing Held September 12, 2022, Case No. 19-34054-sgj (Bankr. N.D. Tex. Sep. 12, 2022)	1407-1468

Ex.	Description	Appx. #
65.	Transcript of Hearing Held December 16, 2020, Case No. 19-34054-sgj (Bankr. N.D. Tex. Dec. 16, 2020)	1469-1535
66.	Transcript of Hearing Held March 19, 2021, Case No. 19-34054-sgj (Bankr. N.D. Tex. Mar. 19, 2021)	1536-1618
67.	Transcript of Hearing Held January 14, 2021, Case No. 19-34054-sgj (Bankr. N.D. Tex. Jan. 14, 2021)	1619-1792
68.	Grant Scott January 21, 2021 Deposition Transcript	1793-1832
69.	*Verified Petition to Take Deposition Before Suit and Seek Documents*, Cause No. DC-21-09534 (Tex. Dist. 95th July 22, 2021)	1833-1842
70.	*Verified Amended Petition to Take Deposition Before Suit and Seek Documents*, Cause No. DC-21-09534 (Tex. Dist. 95th May 2, 2022)	1843-1856
71.	*Order*, Cause No. 21-09534 (Tex. Dist. 95th Jun. 1, 2022)	1857-1858
72.	*Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition*, Cause No. DC-23-01004 (Tex. Dist. 191st Jan. 20, 2023)	1859-1902
73.	Transcript of Hearing Held February 2, 2021, Case No. 19-34054-sgj (Bankr. N.D. Tex. Feb. 2, 2021)	1903-2198
74.	*Order Denying Hunter Mountain Investment Trust's Verified Rule 202 Petition*, Cause No. DC-23-01004 (Tex. Dist. 191st Mar 8, 2023)	2199-2200
75.	Proof of Claim No. 186 (Hunter Covitz)	2201-2213
76.	*Original Complaint*, Index No. 653654/2022, NYSCEF Doc. No. 1 (N.Y. Sup. Oct. 4, 2022).	2214-2261
77.	*Application*, No. 106-25786898 (Royal Court of Guernsey) ➢ Signification ➢ Affidavit of Paul Richard Murphy (*without exhibit*)	2262-2294
78.	Letter from the Texas State Securities Board to Highland Capital Management, L.P., dated May 9, 2023	2295-2296
79.	Transcript of Hearing Held Feb. 23, 2021 (PM), Adv. Proc. No. 21-3010 (Bankr. N.D. Tex. Feb. 23, 2021)	2297-2536
80.	Transcript of Hearing Held Jun. 8, 2023, Case No. 19-34054-sgj (Bankr. N.D. Tex. Jun. 8, 2023)	2537-2926

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EXHIBIT 1

EXHIBIT 1*

MAIN CASE

***In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)**

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
7/30/20	First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims [DI[1] 906] **(solely with respect to Proof of Claim No. 146 Filed by HCRE Partners, LLC)**	**Claimant:** HCRE **Objector:** Highland	HCRE asserted Highland had no interest in SE Multifamily due to mutual mistake and lack of consideration. After engaging in substantial discovery and litigating Highland's motion to disqualify HCRE's counsel due to conflict of interest, HCRE filed a motion to withdraw its proof of claim [DI 3443]. Highland objected [DI 3487]. The Court held a hearing on September 12, 2022 and denied withdrawal of the claim after Dondero would not agree to refrain from filing the same claim in a different forum [DI 3525].	**CONCLUDED:** Trial was held November 1, 2022. On April 28, 2023, the Court entered its order sustaining Highland's objection to HCRE's claim, and disallowing the claim [DI 3767].
9/23/20	Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith [DI 1087]	**Movant:** Highland **Objectors:** Dondero	Acis filed a claim for at least $75 million. Acis's claim resulted from an involuntary bankruptcy initiated when Dondero refused to satisfy an arbitration award and instead fraudulently transferred assets to leave Acis judgment proof. Highland settled for an allowed Class 8 claim of $23 million and approximately $1 million in cash. t Dondero objected to the settlement [DI 1121] alleging it was unreasonable and constituted vote buying. The Acis Settlement Motion was approved and Dondero's objection was overruled [DI 1302].	**CONCLUDED:** Dondero appealed [DI 1347]. On March 18, 2022, this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 3:20-cv-03390-X, DI 25].
11/18/20	Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements [DI 1424]	**Movant:** Highland **Objectors:** Dondero	Highland filed a motion seeking to retain a sub-servicer to assist in its reorganization consistent with the proposed plan. Dondero alleged the sub-servicer was not needed, was too expensive, and would not be subject to Bankruptcy Court jurisdiction [DI 1447].	**CONCLUDED:** Dondero withdrew his objection [DI 1460] after forcing Highland to incur costs responding [DI 1459]
11/19/20	James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside of the Ordinary Course [DI 1439]	**Movant:** Dondero	Dondero alleged Highland sold assets in violation of 11 U.S.C. § 363 and without providing Dondero a chance to bid. Dondero requested an emergency hearing [DI 1443]. Dondero filed this motion despite having agreed to the Protocols governing such sales.	**CONCLUDED:** Dondero withdrew this motion [DI 1622] after Highland and the Committee were forced to incur costs responding and preparing for trial [DI 1546, 1551].
12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [DI 1522, 1528]	**Movants:** Advisors[2] Funds	Movants sought to prevent Highland from causing the CLOs to sell assets without Movants' consent. Movants provided no support for this position, which directly contradicted the terms of the CLO Agreements. The Motion was filed notwithstanding the Protocols governing such sales. Movants requested an emergency hearing [DI 1523].	**CONCLUDED:** The motion was denied [DI 1605] and was characterized as "frivolous."
12/23/20	Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 150, 153, 154) and Authorizing Actions Consistent Therewith [DI 1625]	**Movant:** Highland **Objectors:** Dondero Trusts[3] CLOH	HarbourVest asserted claims in excess of $300 million in connection with an investment in a fund indirectly managed by Highland for, among other things, fraud and fraudulent inducement, concealment, and misrepresentation. Highland settled for an $80 million allowed Class 8 and 9 claim and the transfer of certain assets to a Highland subsidiary. Dondero and the Trusts alleged the settlement was unreasonable; was a windfall to HarbourVest; and vote buying [DI 1697, 1706]. CLOH argued the settlement could not be effectuated under the operative documents [DI 1707]. After analyzing Highland's response, CLOH publicly withdrew its objection. The settlement was approved and the remaining objections were overruled [DI 1788].	**APPEAL:** The Trusts appealed [DI 1870]. This Court affirmed and dismissed Dugaboy's appeal for lack of standing [Dist. Ct. Case No. 3:21-00261-L, DI 38]. Dugaboy appealed [DI 40]. Oral argument held May 1, 2023. Appeal is *sub judice*. CLOH and DAF separately filed a complaint in this Court alleging, among other things, the settlement was a breach of duty and a RICO violation. *See infra*.

All capitalized terms used but not defined herein have the meanings given to them in *Highland Capital Management, L.P.'s Memorandum of Law in Support of Its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Sanctions.*

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
1/14/21	Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104I [DI 1745, 1752]	**Movants:** Trusts Dondero [DI 1756]	Movants filed an emergency motion for the appointment of an examiner after commencement of Plan solicitation and 14 months postpetition. [DI 1748].	**CONCLUDED:** The motion was denied [DI 1960].
1/20/21	James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith [DI 1784]	**Objector:** Dondero	Dondero objected to Highland's proposed assumption of two limited partnership agreements [DI 1719].	**CONCLUDED:** Dondero withdrew his objection [DI 1876] after forcing Highland to incur costs responding.
1/22/20	Fifth Amended Plan of Reorganization [DI 1472]	**Objectors:** Dondero [DI 1661] Trusts [DI 1667] Senior Employees [DI 1669] Advisors & Funds [DI 1670] HCRE [DI 1673] CLOH [DI 1675] NexBank Entities [DI 1676]	All objections to the Plan were consensually resolved prior to the confirmation hearing except for the objections of the Dondero Entities and the U.S. Trustee. The U.S. Trustee did not press its objection at confirmation. All objections were overruled and the Confirmation Order was entered. The Confirmation Order specifically found that Dondero threatened to "burn the place down" if his case resolution plan was not accepted.	**APPEAL:** Dondero, the Trusts, the Advisors, and the Funds appealed [DI 1957, 1966, 1970, 1972]. On August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in all respects except with respect to the exculpation. [Case No. 21-10449, DI 00516439341]. On September 2, 2022, the Funds petitioned for rehearing requesting the Fifth Circuit limit the Gatekeeper. On September 7, 2022, the Fifth Circuit granted rehearing but did not grant the requested relief. [DI 516462923]. Highland moved to conform the Plan on September 9, 2022. [DI 3503]. The Dondero Entities objected [DI 3539, 3540, 3551] requesting the Bankruptcy Court limit the Gatekeeper. On February 27, 2023, the Court issued its order granting motion to conform [DI 3672]. The Advisors appeal of the order was certified for direct appeal to the Fifth Circuit. [Case No. 23-10534]. Briefing in process. Highland and the Dondero Entities filed petitions for writ of cert. to SCOTUS on issues of (a) standard of care and (b) exculpation provision in Plan. Case No. 22-631 (Jan. 5, 2023); Case No. 22-669 (Jan. 16, 2023). Solicitor General was invited to file a brief in Supreme Court cases expressing the views of the United States.
1/24/21	Application for Allowance of Administrative Expense Claim [DI 1826]; [rel. Adv. Proc. No. 21-3010-sgj]	**Movants:** Advisors	The Advisors sought an administrative expense claim for approximately $14 million alleging they overpaid Highland under certain Shared Services Agreements ("SSAs") and Payroll Reimbursement Agreements ("PRAs"). Highland brought a breach of contract claim against the Advisors for failure to pay amounts owed under the SSAs and PRAs [AP No. 21-3010, DI 1]. The claims were consolidated under AP 21-3010 since both arose from the SSAs and PRAs. After a two-day trial, the Court granted Highland's breach of contract claim, denied the Advisors' admin claim. [AP No. 21-3010, DI 124], and entered judgment [AP No. 21-3010, DI 126].	**APPEAL:** The Advisors' appeal [AP. No. 21-3010, DI 128] was docketed to Dist. Ct. Case No. 3:22-cv-02170. Briefing on appeal is complete, and matter is *sub judice*.

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Appeal
3/18/21	James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company's Motion to Recuse Pursuant to 28 U.S.C. § 455 [DI 2060]	**Movants:** Dondero Advisors Trusts HCRE	In March 2021, the Dondero Entities filed a motion to recuse Judge Jernigan [DI 2060, 2061, 2062] (the "Original Recusal Motion"). Judge Jernigan denied the motion finding, among other things, it was untimely and failed to show bias. [DI 2083] (the "Recusal Order"). The Movants appealed [DI 2149, 2169, 2203]. In February 2022, this Court entered its Memorandum Opinion and Order [Dist. Ct. Case No. 3:21-cv-00879-K, DI 39], finding the Recusal Order was a non-appealable interlocutory order. Notwithstanding this Court's Order, in July 2022, Movants filed a supplemental motion to recuse in the Bankruptcy Court, [DI 3470] (the "Supplemental Recusal Motion"), requesting entry of a final, appealable recusal order. On September 1, 2022, the Bankruptcy Court denied the Supplemental Recusal Motion finding it "procedurally improper," [DI 3479], but invited Movants to file (i) a "simple motion" seeking an amended order removing the "reservation of rights" and/or (ii) a new motion to recuse in front of the Bankruptcy Court. On September 27, 2022, Movants filed a renewed motion to recuse [DI 3541] (the "Renewed Recusal Motion"), and then on October 17, 2022, filed an amended renewed motion to recuse, [DI 3570]. On March 6, 2023, the Bankruptcy Court entered its order denying the amended renewed motion to recuse [DI 3676].	**CONCLUDED:** Movants filed a petition for writ of mandamus on April 4, 2023 to the District Court [Case No. 21-cv-879, Docket no. 41]. The next day, the District Court entered an order directing the clerk to unfile the mandamus petition [Docket no. 42].
4/14/21	Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [DI 2196]	**Movant:** Highland **Objector:** HCRE [DI 2278]	After Wick Philips refused to withdraw, Highland moved to disqualify them from serving as counsel to HCRE in connection with the prosecution of HCRE's Proof of Claim on the ground that Wick Phillips jointly represented Highland and HCRE (and others) in the negotiation, drafting and formation of the contracts at issue and therefore was conflicted.	**CONCLUDED:** In December 2021, the Bankruptcy Court granted the motion disqualifying Wick Phillips from serving as counsel to HCRE [DI 3106]
4/15/21	Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith [DI 2199]	**Movant:** Highland	UBS) asserted claims against Highland in excess of $1 billion arising from two Highland-managed funds' breach of contract. The settlement resolved over ten years of litigation but had to be renegotiated after Highland discovered Dondero-controlled Highland had caused the funds to fraudulently transfer over $300 million in assets to Sentinel Reinsurance Ltd. ("Sentinel"), a Cayman-based entity controlled by Dondero and Ellington, in 2017 to thwart UBS's ability to collect on its judgment. Only Dondero [DI 2295] and Dugaboy [DI 2268, 2293] objected. The UBS settlement was approved in May 2021 [DI 2389].	**APPEAL:** The Dondero Entities appealed [DI 2398]. In September 2022, this Court affirmed the Bankruptcy Court's settlement order, [Dist. Ct. Case No. 3:21-cv-01295-X, DI 34], finding, in pertinent part, that in their' "zeal to bamboozle this Court," they omitted critical facts. *Id*. at 12. In October 2022, the Dondero Entities appealed this Court's order to the Fifth Circuit. USCA Case No. 22-10983. Oral argument held June 5, 2023. Matter is *sub judice.*

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
4/23/21	Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [DI 2242]	**Movants:** DAF CLOH	Over 9 months after its entry and post-confirmation of the Plan, DAF and CLOH filed a motion to modify the July Order, alleging the Bankruptcy Court lacked subject matter jurisdiction. Highland opposed the motion [DI 2311] arguing it was a collateral attack barred by *res judicata*, among other things. The Committee joined the opposition [DI 2315]. The Motion was denied on June 25, 2021 [DI 2506]. DAF and CLOH appealed, [DI 2513], but moved to stay the appeal pending the Fifth Circuit's determination of the appeal of the Confirmation Order [Dist. Ct. Case No. 3:21-cv-01585-S, DI 10]. This Court granted the stay motion [DI 21] and, in connection with the *Partially Opposed Motion for Extension of Time to File Appellants" Opening Brief*, directed the appellants to file their opening brief within 14 days of resolution of the Confirmation Order [DI 19], which they failed to do.	**APPEAL:** In September 2022, after the Fifth Circuit affirmed the Confirmation Order, Highland moved for summary affirmance [DI 23]. Appellants opposed [DI 24], and filed a motion to reopen the appeal [DI 25], which Highland opposed [DI 27]. Because they missed the deadline to file their opening brief, Appellants also filed a belated motion for an extension of time [DI 29], claiming "excusable neglect." In November 2022, this Court ordered the appeal remain abated pending resolution of the DAF parties' Fifth Circuit appeal of the order holding them in contempt [USCA Case No. 22-11036, DI 34], on the ground that it was a "related case."
4/27/21	Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders [DI 2247]	**Movant:** Highland	Highland filed a motion by order to show cause why Dondero, CLOH, DAF, and their counsel should not be held in contempt of court for violating the January and July Orders. The Bankruptcy Court entered an order to show cause [DI 2255] and set an in-person hearing for June 8, 2021. On August 4, 2021, following briefing and an evidentiary hearing, the Court held Dondero, CLOH, DAF and others (the "Contemnors") in contempt of court [DI 2660].	**APPEAL:** In August 2021, the Contemnors appealed [DI 2712, 2713, 2758]. In September 2022, this Court affirmed the Bankruptcy Courts order in relevant part [Dist. Ct. Case No. 3:21-cv-01974-X, DI 49]. In October 2022, the Contemnors appealed to the Fifth Circuit [USCA Case No. 22-11036]. Briefing complete, oral argument tentatively scheduled.
4/29/21	Motion to Compel Compliance with Bankruptcy Rule 2015.3 [DI 2256]	**Movants:** Trusts	The Trusts filed a motion seeking to compel Highland to file certain reports under Bankruptcy Rule 2015.3 [DI 2256]. Highland [DI 2341] and the Committee [DI 2343] opposed the motion. Following a hearing in June 2021 [DI 2442], the motion was adjourned and later denied as moot after Highland's Plan became effective. [DI 2812].	**APPEALS:** In August 2022, following the Trusts' appeal, [DI 2840], this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 3:21-cv-02268-S, DI 21]. The Dondero Entities appealed to the Fifth Circuit. [USCA Case No. 22-10831]. In February 22023, the Fifth Circuit issued its order and judgment affirming the District Court [USCA Case No. 22-10831, Docket Nos. 46, 47].
6/25/21	Debtor's Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) entry into an Indemnity Trust Agreement and (ii) Granting Related Relief [DI 2491]	**Movant:** Highland	Highland filed a motion seeking authority to create an indemnity trust to secure the Reorganized Highland, Claimant Trust, and Litigation Trust's indemnification obligations [DI 2491]. Dondero, HCMFA, NPA, and Dugaboy objected [DI 2563] arguing it was an improper plan modification. A hearing was held in July 2021 and Highland's motion was granted [DI 2599].	**APPEAL:** After the Dondero Entities appealed [DI 2673], this Court affirmed the Bankruptcy Court's order. [Dist. Ct. Case No. 3:21-cv-01895-D, DI 45]. The Dondero Entities appealed. [USCA Case No. 22-10189]. In January 2023, the Fifth Circuit affirmed this Court's order. [USCA Case No. 22-10189, Document No. 90-1].

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
7/8/21	Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief [DI 2535]	**Movant:** Highland **Objector:** NPA	Highland filed a motion seeking authority to sell certain real property [DI 2535]. NPA objected [DI 2621] arguing Highland created a sale process designed to exclude NPA without a sound business justification.	**CONCLUDED:** A hearing was held on August 4, 2021 and Highland's motion was granted over NPA's objection [DI 2687].
7/8/21	Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief [DI 2537]	**Movant:** Highland **Objector:** NPA	Highland filed a motion seeking authorization to sell, among other things, certain limited partnership interests in PetroCap Partners III, L.P. [DI 2537]. NPA objected, seeking to inject itself into the bidding process. [DI 2626].	**CONCLUDED:** In August 2021, the Bankruptcy Court overruled NPA's objection and granted Highland's motion [DI 2699].
10/8/21	Final Fee applications of FTI [DI 2902], Teneo Capital [DI 2903], Sidley Austin [DI 2904], PSZJ [DI 2906], and Wilmer Cutler [2907]	**Movants:** Highland's professionals **Objector:** NPA	PSZJ, Wilmer Cutler, Teneo Capital, Sidley Austin, and FTI filed final fee applications in the Bankruptcy Court. NPA objected [DI 2977, 3015], sought permission to employ a fee examiner to review the fee applications, and sought expansive discovery. In November 2021, the fee applications were granted after substantial briefing and a hearing. [DI 3047, 3048, 3056, 3057, and 3058].	**APPEALS:** NPA filed notices of appeal to this Court [DI 3076, 3077, 3078, 3079, and 3080], which were then consolidated [Dist. Ct. Case No. 21-cv-3086-K, DI 9]. In May 2022, this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 21-cv-3086-K, DI 37]. NPA appealed [DI 39]. Fifth Circuit briefing is complete and the appeal is under advisement [USCA 22-10575].
1/11/22	Motion to Ratify Second Amendment to Proof of Claim [Claim No. 198] and Response to Objection to Claim [DI 3177, 3178]	**Movant:** CLOH **Objector:** Litigation Trustee	CLOH's requested to ratify its Second Amended CLO HoldCo Crusader Claim [Proof of Claim No. 198], and deny the Litigation Trustee Objection as moot.	**STATUS:** CLOH's motion was denied by the Bankruptcy Court [DI 3457], and its appeal was rejected by this Court. *See CLO Holdco, Ltd. v. Kirschner (In re Highland Cap. Mgmt., L.P.)*, No. 3:22-CV-2051-B, 2023 U.S. Dist. LEXIS 87842, at *1 (N.D. Tex. May 18, 2023). CLOH has appealed to the Fifth Circuit [Case No. 3:22-cv-02051-B D, DI 20].
Jan. 2022	NPA acquisition of claim [DI 3146]	N/A	In January 2022, NPA acquired a disputed employee claim [DI 3146], which was expunged [DI 3180]. NPA has appealed. Case 3:22-cv-00335-L	Briefing complete.

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
6/30/22	Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust [DI 3382]	**Movant:** Dugaboy **Objector:** Highland	Dugaboy moved for a determination of the current value of the estate and an accounting of its assets available for distribution, arguing it was somehow in the money and therefore had appellate standing and rights (the "Valuation Motion") [DI 3382]. Highland objected. [DI 3465]. After Dugaboy amended its Valuation Motion in September 2022 [DI 3533, 3535], Highland filed its reply in further opposition [DI 3614].	**STATUS:** During a hearing held in November 2022, the Court questioned whether the relief could only be obtained through an adversary proceeding and requested additional briefing [DI 3625]. After reviewing the supplemental briefs, the Court ruled an adversary proceeding was required [DI 3645]. On May 10, 2023, Dugaboy and Hunter Mountain filed a complaint seeking declaratory relief as to the value of the Claimant Trust assets and their interest therein [AP No. 23-03038-sgj, Docket No. 1]. The timing of Highland's motion to dismiss must be fixed.
2/6/23	Motion for Leave to File Proceeding [DI 3662]	**Movants:** Dugaboy and Hunter Mountain Investment Trust **Objector:** Highland	Following the ruling on the Valuation Motion, Dugaboy and Hunter Mountain Investment Trust filed a motion for leave to file a complaint against Highland seeking information about the estate's current assets, results of asset sales, and amounts distributed to creditors.	**STATUS:** On May 10, 2023, the parties filed a stipulation withdrawing the motion [DI 3662].
3/28/23	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [DI 3699]	**Movant:** Hunter Mountain Investment Trust **Objector:** Highland, Highland Claimant Trust, James P. Seery, Jr., Farallon, Stonehill	Hunter Mountain seeks leave of the Bankruptcy Court to file a complaint against defendants Seery, Stonehill, and Farallon alleging both direct and derivative claims on behalf of Highland of insider trading and breach of fiduciary duty. The proposed complaint alleges that Seery engaged in a *quid pro quo* with Stonehill and Farallon by which Seery put Stonehill and Farallon on the Oversight Board in exchange for a "rubber stamp" of Seery's compensation as CEO of Highland.	Trial was held June 8, 2023, and the matter is under advisement.
6/15/23	The Dugaboy Investment Trust's Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.'s Phone [Docket No. 3802]	**Movant:** Dugaboy	Dugaboy seeks to preserve the ESI contained on Seery's iPhone and to permit the recoveryof his text messages. The basis for this motion was information learned through discovery in a separate action brought by Scott Ellington, Highland's former general counsel, against a former Highland employee, in which Ellington subpoenad Highland's independent directors and bankruptcy counsel, as well as other parties to the bankruptcy case, requiring a motion for a protective order. *See infra.*	The timing of Highland's objection must be fixed.

ADVERSARY PROCEEDINGS

***Highland Capital Management, L.P. v. James D. Dondero*, Adv. Proc. No. 20-03190-sgj (Bankr. N.D. Tex.)**

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
12/7/20	Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [DI 2]	**Movant:** Highland	In December 2020, after Dondero interfered with the management of the estate and threatened certain employees, Highland commenced an adversary proceeding and sought [DI 2] and obtained a TRO [DI 10] and a Preliminary Injunction [DI 59] against Dondero prohibiting him from interfering with Highland's estate and enjoining him from engaging in other wrongful conduct.	**CONCLUDED:** Dondero appealed to this Court [Dist. Ct. Case No. 3:21-cv-01590-N] (which declined to hear the interlocutory appeal), and filed a petition for writ of mandamus from the Fifth Circuit. Ultimately, a consensual injunction was entered [DI 182] and the writ of mandamus was withdrawn.
1/7/21	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 [DI 48]	**Movant:** Highland	In late December 2020, Highland discovered Dondero had violated the TRO by, among other things, again interfering with the management of the estate and conspiring with Highland's then-general counsel and assistant general counsel to coordinate offensive litigation against Highland. An extensive evidentiary hearing was held in March 2021, and on June 7, 2021, the Bankruptcy Court entered an order finding Dondero in contempt of court [DI 190].	**APPEALS:** Dondero appealed [DI 212]. In August 2022, this Court affirmed in substantial part [Dist. Ct. Case No. 3:21-cv-01590-N, DI 42]. Dondero appealed to the Fifth Circuit [USCA Case Number 22-10889]. Briefing complete, oral argument tentatively scheduled.

***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., and CLO Holdco, Ltd.*, Adv. Proc. No. 21-03000-sgj (Bankr. N.D. Tex.)**

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
1/6/21	Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Certain Entities Owned and/or Controlled by Mr. James Dondero [DI 2]	**Movant:** Highland	In late December 2020, Highland received threatening letters from the Funds, the Advisors, and CLOH regarding Highland's management of the CLOs. These letters reiterated the arguments made by these parties in their December motion that the Bankruptcy Court denied as "frivolous." Highland sought to prevent the Dondero Entities from improperly interfering in the management of the estate. In January 2021, the parties agreed to entry of a TRO [DI 20] and later a final disposition of the matter pursuant to Bankruptcy Rule 9019 [DI 2589].	**CONCLUDED:** In September 2021, the Court entered its order approving the settlement [DI 2829].

***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.*, Adv. Proc. No. 21-03010-sgj (Bankr. N.D. Tex.)**

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
2/17/21	Debtor's Emergency Motion for a Mandatory Injunction Requiring the Advisors to Adopt and Implement a Plan for the Transition of Services by February 28, 2021 [DI 2]	**Plaintiff:** Highland	Highland's Plan called for a substantial reduction in its work force. As a result, Highland terminated certain shared services agreements and attempted to negotiate a transition plan with the Advisors to enable them to continue providing services to their funds without interruption, but the Advisors would not say "yes." Concerned the Advisors would be unable to service its clients, Highland commenced this action to force the Advisors to adopt a transition plan.	**CONCLUDED:** During the hearing, the Advisors announced for the first time they had cobbled together their own transition plan. An order was entered in February 2021 [DI 25] making factual findings and ruling the injunction was moot.

CONSOLIDATED NOTES LITIGATION (Bankr. N.D. Tex.)
MEMBER CASES: Adv. Proc. Nos. 21-03003-sgj, 21-03004-sgj, 21-03005-sgj, 21-03006-sgj, 21-03007-sgj, 21-03082-sgj

MAIN NOTES LITIGATION

1. ***Highland Capital Management, L.P. v. James Dondero,* Adv. Proc. No. 21-03003-sgj (Bankr. N.D. Tex.)**
2. ***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.,* Adv. Proc. No. 21-03004-sgj (Bankr. N.D. Tex.)**
3. ***Highland Capital Management, L.P. v. NexPoint Advisors, L.P.,* Adv. Proc. No. 21-03005-sgj (Bankr. N.D. Tex.)**
4. ***Highland Capital Management, L.P. v. Highland Capital Management Services, Inc.,* Adv. Proc. No. 21-03006-sgj (Bankr. N.D. Tex.)**
5. ***Highland Capital Management, L.P. v. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC),* Adv. Proc. No. 21-03007-sgj (Bankr. N.D. Tex.)**

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
1/22/21	Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [DI 1]	**Plaintiff:** Highland	After Dondero and four affiliates (HCMFA, NPA, HCMS, HCRE) refused to satisfy over $60 million on certain promissory notes, Highland filed collection actions against each Dondero Entity. *See* AP Nos. 21-03003-sgj; 21-03004-sgj; 21-03005-sgj; 21-03006-sgj; 21-03007-sgj. Three months after the complaint was filed, the Dondero Entities moved to withdraw the reference. Following a hearing in May 2021, the Bankruptcy Court recommended the Bankruptcy Court adjudicate pre-trial matters, including consideration (but not determination) of dispositive motions. This Court adopted the R&Rs and the actions were later consolidated. Dondero amended his answer to assert, among other things, that he and his sister, Nancy Dondero, entered an undisclosed oral agreement claiming the notes would be forgiven upon fulfillment of certain conditions subsequent (the "Alleged Agreement Defense"). All Dondero Entities (except, initially, HCMFA) adopted the Alleged Agreement Defense. Dondero, NPA, and HCRE also asserted Highland "negligently" caused their defaults under the term notes by not effectuating the payments on their behalf. In support of this "negligence" defense, the Dondero Entities moved to extend expert discovery to litigate the legal issue of whether Highland had an affirmative "duty" to effectuate payments on their behalf. The Bankruptcy Court denied the motion, finding, in pertinent part, that expert testimony on legal issues was improper. The Dondero Entities sought improperly sought reconsideration in this Court. HCMFA contended the HCMFA notes were "void" or "unenforceable" due to "mutual mistake," and specifically, that Waterhouse, HCMFA's treasurer and Highland's former CFO, lacked authority to execute the notes and signed them by "mistake" ("HCMFA's Mistake Defense"). HCMFA subsequently sought leave to assert that Waterhouse did not sign the HCMFA notes at all. After a hearing on HCMFA's motion for leave, the Bankruptcy Court denied the motion on the ground that the proposed additional defense (that Waterhouse did not sign the notes) was futile. HCMFA again improperly sought reconsideration in this Court. In December 2021, Highland moved for Partial Summary Judgment. Following a hearing in April 2022, the Bankruptcy Court issued its Report & Recommendation (the "R&R"), recommending Partial Summary Judgment in favor of Highland. In the R&R, the Bankruptcy Court found no reasonable trier of fact could find the Alleged Agreement existed, the Alleged Agreement Defense did not pass the "straight-face test," and "there was a complete lack of evidence" supporting the Alleged Agreement Defense. The Bankruptcy Court also found no reasonable trier of fact could believe HCMFA's Mistake Defense ("the 'Mutual Mistake' defense—like the 'oral agreement' defense asserted by the other Note Maker Defendants—is farfetched, to say the least, especially in the context of a multi-billion company with perhaps the world's most iconic and well-known public accounting firm serving as its auditors."). In August 2022, Highland filed a notice of attorneys' fees and backup documentation in support of the proposed judgments. The Dondero Entities objected. Highland responded in September 2022. The Dondero Entities then filed an unauthorized reply in support of their objection. Highland moved to strike on the grounds it was not permitted under Fed. R. Bankr. P. 9033 or the parties' Stipulation. Highland then moved to supplement its backup documentation to include two invoices inadvertently omitted. The Dondero Entities filed a meritless objection which was overruled. In November 2022, the Bankruptcy Court issued a supplemental R&R overruling the Dondero Entities' objections to the Proposed Judgment. The Dondero Entities objected and Highland responded.	**CONCLUDED:** On July 6, 2 023, the District Court entered an order adopting the Bankruptcy Court's R&R, granting partial summary judgment on breach of the notes and entering judgment [Case No. 3:21-cv-00881-X, DI 128]. The Court also entered orders finding moot (a) Highland's motion to Strike Defendants' Unauthorized Reply and (b) NPA/HCMS/HCRE's objection to the Bankruptcy Court's order denying the motion to extend expert discovery [DI 135].

HCMFA NOTES LITIGATION II *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Proc. No. 21-03082-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
11/9/21	Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [DI 1]	**Plaintiff:** Highland	In November 2021, Highland commenced another collection action against HCMFA for breach of two additional promissory notes (the "Pre-2019 Notes") that were subject to a prepetition standstill agreement that Dondero entered into with himself. This action was consolidated with the main litigations. HCMFA adopted the Alleged Agreement Defense asserted in the main litigation. During discovery, Dondero was forced to change story his story yet again, stating he, not his sister, entered into the Alleged Agreement. Highland moved for summary judgment. After a hearing, the Bankruptcy Court issued its Report & Recommendation recommending summary judgment be entered against HCMFA, finding, "[t]he Alleged Oral Agreement Defense appears to be a 'cut-and-paste' of the same alleged 'oral agreement' defense that was ultimately asserted in the Five Earlier-Filed Note Actions by four of the five Note Maker Defendants (all but HCMFA)" and the defense "morphed" as the five earlier-filed Main Note Litigation progressed, "The only summary judgment evidence submitted by HCMFA in support of its Alleged Oral Agreement Defense is the conclusory, self-serving, unsubstantiated declarations of Dondero and his sister regarding the existence of the Alleged Oral Agreements." HCMFA objected to the R&R in this Court and to Highland's proposed judgment in Bankruptcy Court. The Bankruptcy Court issued its supplemental R&R recommending this Court overrule HCMFA"s objections to the proposed judgment. HCMFA filed the same objection to the supplemental R&R in this Court, and Highland responded.	**CONCLUDED:** On July 6, 2 023, the District Court entered an order adopting the Bankruptcy Court's R&R, granting summary judgment on breach of the notes and entering judgment [Case No. 3:21-cv-00881-X, DI 133].

UBS Securities LLC and UBS AG London Branch vs. Highland Capital Management L.P., Adv. Pro. No. 21-03020-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
3/31/21	Original Complaint for Injunctive Relief [DI 3]	**Plaintiff:** UBS	In early 2021, Highland discovered certain former employees under Dondero's direction caused certain entities to transfer $300 million in face amount of cash and securities to Sentinel to avoid the judgment in favor of UBS. UBS then sought to enjoin Highland from allowing funds under its management to make transfers to Sentinel, its affiliates, or transferees pending decision as to whether assets were fraudulently transferred. On June 8, 2022, Highland filed motion to withdraw its answer and consent to judgment [DI 169]	**CONCLUDED:** On August 23, 2022, the Court granted Highland's motion to withdraw the answer, and a permanent injunction was issued [DI 185]. At the hearing, the Court said it would assess the evidence to determine whether a criminal referral was warranted.

Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd., Adv. Proc. No. 21-03067-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
4/12/21	Original Complaint	**Plaintiffs:** DAF CLOH	The Dondero Entities filed their original complaint in April 2021 in this Court alleging Highland and Seery violated SEC rules, breached fiduciary duties, engaged in self-dealing, and violated RICO in connection with its settlement with HarbourVest [Dist. Ct. Case No. 21-cv-00842-B]. The Dondero Entities brought this complaint even though CLOH previously withdrew its objection to the HarbourVest settlement. Highland believes the complaint is frivolous and represents a collateral attack on the order approving the HarbourVest settlement. On May 19, 2021, Highland filed a motion to enforce the reference and have the case referred to the Bankruptcy Court [DI 22]. Highland also filed a motion to dismiss the complaint (the "Original MTD") [DI 26]. After the motions were briefed, the Dondero Entities moved to stay the proceeding pending resolution of the confirmation appeal [DI 55] (the "First Stay Motion"). Highland opposed the First Stay Motion. In September 2021, the Court entered an order enforcing the reference [DI 64], and this matter was sent to the Bankruptcy Court under Adv. Proc. No. 21-3067. On November 18, 2021, five days prior to the hearing on the Original MTD, the Dondero Entities filed an amended motion to stay the proceedings pending resolution of the appeal of the confirmation order [DI 69] (the "Second Stay Motion"), in which they reiterated the arguments in the First Stay Motion, and attached a motion to withdraw the reference [*id*. at Exhibit A], which reiterated the same arguments in the Dondero Entities' opposition to Highland's motion to enforce the order of reference. In March 2022, the Court dismissed the action on collateral and judicial estoppel grounds [DI 100]. The Dondero Entities appealed and that appeal was consolidated with their appeal of the order denying their motion for a stay [3:21-cv-03129-B]. On September 2, 2022 [DI 28], this Court reversed the Bankruptcy Court's finding that Plaintiffs' claims were barred by collateral estoppel. On judicial estoppel, this Court affirmed the Bankruptcy Court's finding that the first two elements were satisfied but remanded to determine if CLOH's inconsistent position was "inadvertent." Highland filed its renewed Motion to Dismiss on October 14, 2022 [DI 122, 123]. On November 18, 2022, Plaintiffs filed a renewed motion to withdraw the reference [DI 128].	**APPEALS:** A hearing on both motions was held on January 25, 2023. On February 6, 2023, the Bankruptcy Court issued its R&R, recommending denial of Plaintiffs' renewed motion to withdraw the reference [DI 158], and, on February 21, 2023, the Dondero Entities objected to the R&R [Dist. Ct. Case No. 3:22-cv-02802-S, DI 3]. The R&R is pending final decision of the District Court. On June 25, 2023, the Bankruptcy Court issued its order granting Highland's renewed motion to dismiss [AP No. 21-03067-sgj, DI 167]. On June 27, 2023, DAF/CLOH appealed the order dismissing the action [DI 168]. The appeal is docketed to Dist. Ct. Case No. 3:23-cv-01503-G.

The Charitable DAF Fund, LP v. Highland Capital Management, L.P., Adv. Proc. No. 22-03052-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
7/22/21	Original Complaint	**Plaintiff:** DAF	DAF filed its original complaint in July 2021 in this Court alleging Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets [Dist. Ct. Case No. 3:21-cv-01710-N, DI 1]. DAF's allegations duplicated allegations Dugaboy made in proofs of claim filed in the Bankruptcy Court and in its complaint filed in this Court. DAF never served the Complaint but filed a motion to stay (which was also not served) pending appeal of the confirmation order [DI 6]. In September 2021, the Court stayed the proceeding [DI 7]. Highland then voluntarily appeared, and moved for reconsideration of the stay order [DI 8] and to dismiss [DI 11]. In May 2022, the Court lifted the stay and referred the case to the Bankruptcy Court. Highland filed its amended motion to dismiss in May 2022 [DI 19, 20] arguing the complaint asserted time-barred administrative expense claims. In September 2022, following a hearing, the Court dismissed the complaint as time-barred [DI 42, 43].	**CONCLUDED:** DAF filed a notice of appeal on October 5, 2022 [Case No. 3:22-cv-02280-S] but on February 21, 2023 (the day its opening brief was due) notified counsel it no longer intended to pursue it. A joint stipulation dismissing the appeal with prejudice was filed on February 22, 2023 [DI 9].

PCMG Trading Partners XXIII, L.P. v. Highland Capital Management, L.P., Adv. Proc. No. 22-03062-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
5/21/21	Original Complaint	**Plaintiff:** PCMG Trading Partners XXIII, L.P.	PCMG filed its original complaint in April 2021 in this Court alleging Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets [Dist. Ct. Case No. 3:21-cv-01169-N, DI 1]. PCMG is owned and controlled by Dondero, and held less than a 0.05% interest in the investment vehicle. Highland believed the complaint was frivolous. PCMG never served the Complaint but filed a motion to stay (which was also not served) pending appeal of the confirmation order [DI 6]. In September 2021, the Court stayed the proceeding [DI 7]. Highland then voluntarily appeared, and moved for reconsideration of the stay order [DI 8] and to dismiss [DI 11]. In May 2022, the Court lifted the stay and referred the case to the Bankruptcy Court. Highland filed its amended motion to dismiss on June 16, 2022 [DI 20, 21] arguing the complaint asserted time-barred administrative expense claims. PCMG withdrew the complaint in July 2022 after forcing Highland to incur substantial expense litigating the matter.	**CONCLUDED:** An amended Stipulation of Dismissal of Adversary Proceeding (with prejudice) [DI 27] was filed on August 1, 2022.

DISTRICT COURT ACTIONS				
***Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd.*, Case No. 21-cv-00842-B (N.D. Tex. April 12, 2021)**				
Date	**Motion**	**Movant / Objector**	**Summary of Motion**	**Status**
4/19/21	Plaintiff's Motion for Leave to File First Amended Complaint in the District Court	**Plaintiffs:** DAF CLOH	Plaintiffs filed a motion seeking leave from this Court to add Seery as a defendant and to seek, in this Court, a reconsideration of two final Bankruptcy Court orders [DI 6].	**CONCLUDED:** This Court denied the motion but with leave to refile. This matter was referred to the Bankruptcy Court on September 20, 2021. *See* Adv. Proc. No. 21-03067-sgj (Bankr. N.D. Tex.)
***The Dugaboy Investment Trust v. Highland Capital Management, L.P.*, Case No. 21-cv-01479-S (N.D. Tex. June 23, 2021)**				
Date	**Motion/Complaint**	**Movant / Objector**	**Summary of Motion**	**Status**
6/23/21	Original Complaint	**Plaintiff:** Dugaboy	Dugaboy alleges Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets. Dugaboy is Dondero's family trust holding less than a 2% interest in the vehicle. Dugaboy's allegations duplicated allegations it made in proofs of claim filed in the Bankruptcy Court.	**CONCLUDED:** Dugaboy withdrew the Complaint after Highland informed the Bankruptcy Court of the filing.

OTHER DONDERO-RELATED LITIGATION			
Date	**Parties**	**Summary of Litigation**	**Status**
2009	UBS, Highland, Multiple Highland Entities	In 2008, two funds managed by Highland breached their contractual obligations to UBS by failing to meet a margin call. UBS filed suit in New York Supreme Court in 2009. After a decade of litigation, UBS secured a $1 billion plus judgment against the two funds and sought to hold Highland, among others, liable as an alter ego. *Judgment*, Index No. 650097/2009, Docket No. 646 (N.Y. Sup. Feb. 10, 2020). UBS and the Dondero Entities continue to litigate. UBS filed a turnover motion in February 2023 seeking to hold Dondero and Scott Ellington, his long-time general counsel, liable for the full $1 billion plus judgment. *Special Turnover Petition*, Index No. UNASSIGNED, Docket No. 142 (N.Y. Sup. Feb. 8, 2023).	This matter is currently being litigated.
2018	Joshua Terry, Acis, Highland, Neutra, Ltd., HCLOF	After Joshua Terry secured an $8 million arbitration award against Acis, Dondero caused the stripping of Acis's assets to make it judgment proof. Terry subsequently filed an involuntary bankruptcy petition. Case No. 18-30264-sgj11 (Bankr. N.D. Tex.). Through Acis's confirmed plan of reorganization, Terry became Acis's sole owner. The Acis bankruptcy was marked by extremely acrimonious litigation and multiple adverse credibility findings regarding Dondero and other Highland employees (acting at Dondero's direction). In the Acis bankruptcy, the Bankruptcy Court issued: *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan* [DI 827] *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management LP and Acis Capital Management GP LLC, as Modified* [DI 829] *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management LP and Acis Capital Management GP LLC, as Modified* [DI 830] Highland and its proxies appealed to this Court and the Fifth Circuit but their appeals were denied: Civ. Case No. 3:19-cv-00291-D; USCA Case No. 19-10847. As soon as the injunction in Acis's plan expired, Dondero (through NSOF) immediately filed suit against Acis and Terry, among others, in the U.S. District Court for the Southern District of New York (Civ. Case No. 1:21-cv-04384). The court dismissed Dondero's federal claims and NSOF appealed to the Second Circuit (USCA Case No. 22-1912). The appeal is pending. Stymied in federal court, Dondero, again through NSOF, filed a substantially similar action against Acis and Terry, among others, in New York state court. Index No. 653654/2022 (N.Y. Sup. 2022). Motions to dismiss NSOF's state law action are *sub judice*. Immediately after the expiration of the injunction in Acis' plan, Dondero—through NSOF—filed suit against Acis, Terry, and others in the Southern District of New York alleging they violated their fiduciary duties to NSOF as an investor in a CLO managed by Acis (and which had been managed by Dondero prior to the Acis bankruptcy). Civ. Case No. 21-cv-04384-GHW (S.D.N.Y. May 14, 2021). Dondero's litigation caused Acis to halt distributions from its managed CLOs thus depriving HCMLP of approximately $20 million in proceeds. The Southern District of New York dismissed Dondero's litigation. *NexPoint Diversified Real Estate Trust v. Acis Cap. Mgmt., L.P.*, 620 F.Supp. 3d 36 (S.D.N.Y. 2022). Undeterred, Dondero appealed to the Second Circuit (Case No. 22-1912 (2d Cir.)), re-filed his breach of fiduciary duty claims in New York state court (Index No. 653654/2022 (N.Y. Sup. 2022)), asserted duplicative counterclaims in another pending litigation involving Acis (Case No. 23-cv-11059-GHW (S.D.N.Y. Dec. 24, 2021)), and filed a lawsuit against HCLOF in the Royal Court of Guernsey alleging HCLOF unfairly prejudiced CLOH by settling with Acis, rather than suing it (No. 106-25786898 (Royal Court of Guernsey))	**CONCLUDED:** On July 9, 2021, the Fifth Circuit affirmed the bankruptcy court's order confirming the Chapter 11 plan, concluding the appeal of plan injunction was moot [USCA Case No. 19-10847, Doc. No. 00515931634].

STATE COURT ACTIONS

James Dondero, Petitioner v. Alvarez Marsal, et al., Cause No. DC-21-09534 (95th Civil District Court, Tex. July 22, 2021)

Date	Motion	Movant / Objector	Summary of Motion	Status
7/22/21	Verified Petition to Take Deposition Before Suit and Seek Documents	**Movant:** Dondero	Dondero sought pre-suit discovery from Farallon, a purchaser of certain claims in the Bankruptcy Case, and Alvarez. Dondero alleged Farallon breached certain U.S. Trustee requirements when it purchased claims. Dondero also alleged Farallon purchased those claims because of its relationship to Seery and Seery was leveraging his relationship with Farallon to ensure he remained in control of Highland. Farallon and Alvarez removed the action to the Bankruptcy Court [DI 1]. Dondero moved to remand [DI 4]. On January 4, 2022, the Court remanded the case [DI 22, 23].	**CONCLUDED:** The state court dismissed the matter as without merit

Ellington v. Daugherty, Cause No. DC-22-00304 (101st Jud. Dist. Tex. 2022)

Date	Motion	Plaintiff / Defendant	Summary of Motion	Status
1/11/22	Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction	**Plaintiff:** Scott Ellington **Defendant:** Patrick Daugherty	Scott Ellington, Highland's former general counsel, sued Daugherty, a former Highland employee, for stalking; Ellington subpoenaed Highland's independent directors, Highland's bankruptcy counsel, and other parties to the bankruptcy case requiring a motion for a protective order in New Jersey; Ellington moved to hold an independent director in contempt, in violation of the gatekeeper order; Ellington subpoenaed deposition of another independent director. Farallon and Alvarez removed the action to the Bankruptcy Court [DI 1]. Dondero moved to remand [DI 4]. On January 4, 2022, the Court remanded the case [DI 22, 23].	Dondero's long-time legal counsel is using the pretext of a "stalking" lawsuit to seek to discovery from Highland that they have improperly used in the Highland bankruptcy.

In re Hunter Mountain Investment Trust, Cause No. DC-23-01004 (191st Civil District Court, Tex. Jan. 20, 2023)

Date	Motion	Movant / Objector	Summary of Motion	Status
1/20/23	Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition	**Movant:** Hunter Mountain Investment Trust	Hunter Mountain Investment Trust sought pre-suit discovery from Farallon and Stonehill as purchasers of certain claims. Hunter Mountain's petition is substantially similar to the petition for pre-suit discovery filed by Dondero in Texas state court in July 2021.	**CONCLUDED:** The state court dismissed the matter as without merit.

Highland Cap. Mgmt., L.P. v. SE Multifamily Holdings LLC, et al, Case No. 2023-0493 (Del. Chan.)

Date	Motion	Movant / Plaintiff	Summary of Motion	Status
5/5/23	Verified Complaint for Specific Performance to inspect and Copy Books and Records	**Plaintiff:** Highland	Highland filed complaint seeking specific performance of the SE Multifamily operating agreement, *First Amended and Restated Limited Liability Company Agreement,* dated March 15, 2019, effective as of August 23, 2018, to allow Highland to inspect books and records after defendants SE Multifamily Holdings LLC and HCRE refused to make available for inspection and copying SE Multifamily's books and records as is required by Agreement.	Highland was forced to bring an action for specific performance when Dondero failed to comply with his unambiguous contractual obligation to provide Highland with access to SEM's books and records.

OTHER		
US TRUSTEE LETTERS		
Date	**Summary of Matter**	**Status**
2021; 2022	Dugaboy, NPA, and HCMFA sent three baseless and factually inaccurate letters to the Office of General Counsel, Executive Office for U.S. Trustees in November 2021 and May 2022. The letters, totaling roughly 200 pages, allege a litany of wrongdoing by Highland, Seery, and others, arising from their administration of the bankruptcy estate. [DI 3662-1]	N/A
TEXAS STATE SECURITIES BOARD		
Date	**Summary of Matter**	**Status**
May 2023	Mark Patrick, as the DAF's trustee, admitted that the DAF or "one of its entities" filed a complaint against HCMLP with the Texas State Securities Board (the "TSSB") during the Bankruptcy Case.	In May 2023, the TSSB, after "full consideration," closed its investigation of HCMLP without finding any wrongdoing.
***In re Highland Select Equity Master Fund, L.P.*, Case No. 23-31037-swe7 and *In re Highland Select Equity Fund GP, L.P.*, Case No. 23-31039-mvl7 (not jointly administered)**		
Date	**Summary of Proceeding**	**Status**
5/25/23	Select Equity Master Fund and Select Equity Fund filed for bankruptcy in May 2023. These entities only filed because Dugaboy initiated litigation in SDNY. *See The Dugaboy Investment Trust v. Highland Select Equity Master Fund, L.P. et al.*, Case No. 1:23-cv-01636-MKV.	Dugaboy and PCMG both tried to sue Highland for mismanagement of Select fund during the Highland bankruptcy, but were stymied. Highland made an offer to give Dugaboy everything in Select Fund to avoid costs being incurred, but Dugaboy has not responded. Dugaboy filed objection to reassign the case to Judge Jernigan, arguing she is biased.

EXHIBIT 2

FILED: NEW YORK COUNTY CLERK 02/10/2020 10:21 AM INDEX NO. 650097/2009
NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

UBS SECURITIES LLC and
UBS AG, LONDON BRANCH,

Plaintiffs,

- against -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC.,

Defendants.

Index No.: 650097/2009

Hon. Marcy S. Friedman
IAS Part 60

[~~PROPOSED~~] JUDGMENT

Plaintiffs UBS Securities LLC and UBS AG, London Branch, having filed a Complaint against Defendants Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company on February 24, 2009;

NOW, Plaintiffs UBS Securities LLC and UBS AG, London Branch having filed their Second Amended Complaint against Defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., which was consolidated with the claims set forth in Plaintiffs' June 28, 2010 Complaint against Defendant Highland Capital Management, L.P. (Index. No. 650752/2010);

FILED: NEW YORK COUNTY CLERK 02/10/2020 10:21 AM INDEX NO. 650097/2009
NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

NOW, the Court having held trial from July 9, 2018 through July 27, 2018, on (1) Plaintiffs' third and fourth causes of action against the Fund Counterparties, and (2) Defendant Highland Capital Management, L.P.'s counterclaims against Plaintiffs;

AND the Court having rendered a final Decision and Order after Trial on November 14, 2019, in which it found in favor of Plaintiffs UBS Securities LLC and UBS AG, London Branch on their third and fourth causes of action against the Fund Counterparties, and dismissed Defendant Highland Capital Management, L.P.'s counterclaims with prejudice;

IT IS NOW HEREBY ORDERED AND ADJUDGED that Plaintiffs UBS Securities LLC with an address of 677 Washington Blvd, Stamford, Connecticut, and 299 Park Avenue, New York, New York and UBS AG, London Branch with an address of Finsbury Avenue, London United Kingdom are granted a judgment of $519,374,149 and entitled to prejudgment interest in the amount of 9% simple interest per year from the date of the breach, which the Court has determined is December 5, 2008, for an overall judgment as of January 22, 2020 of **$1,039,957,799.44**, with additional interest per day thereafter of $128,065 until entry of judgment, to be apportioned among Defendants as follows:

(i) $264,880,815.99 against Defendant Highland CDO Opportunity Master Fund, L.P. with an address of 52 Reid Street, Hamilton, Bermuda, plus $265,497,661.73 in prejudgment interest, for a total judgment against Defendant Highland CDO Opportunity Master Fund, L.P. as of January 22, 2020 of **$530,378,477.72** with additional prejudgment interest per day thereafter of $65,313.08 until entry of judgment in the total amount the sum of $1,240,948.52, for of $531,619,426.24, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $35,955,000 (51% of $70.5 million); and

FILED: NEW YORK COUNTY CLERK 02/10/2020 10:21 AM INDEX NO. 650097/2009
NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

(ii) $254,493,333.01 against Defendant Highland Special Opportunities Holding Company with an address of Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, plus $255,085,988.72 in prejudgment interest, for a total judgment against Defendant Highland Special Opportunities Holding Company as of January 22, 2020 of **$509,579,321.73** with additional prejudgment interest per day thereafter of $62,751.78 until entry of judgment in the total amount of the sum of $510,771,605.55, for $1,192,283.82, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $34,545,000 (49% of $70.5 million).

ENTER:

Dated: New York, New York
January 22, 2020

HON. MARCY S. FRIEDMAN, J.S.C.

FILED
FEB 10 2020
COUNTY CLERK'S OFFICE
NEW YORK

Milton A. Tucker
CLERK

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NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INDEX # 650097/2009

UBS Securities LLC, UBS AG, London Branch

Plaintiff(s)/Petitioner(s)

Against

Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland Credit Strategies Fund, Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., Strand Advisors Inc.

Defendant(s)/Respondent(s)

JUDGMENT

Attorney for the Prevailing Party

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FILED AND DOCKETED
FEB 10 2020
AT 10:20 AM
N.Y., CO. CLK'S OFFICE

EXHIBIT 3

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

----------X

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS, INC.,

Defendant.

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INDEX NO. 650097/2009

DECISION AND ORDER AFTER TRIAL

This action arises out of a failed restructured transaction between plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, UBS) and defendants Highland CDO Opportunity Master Fund, L.P. (CDO Fund) and Highland Special Opportunities Holding Company (SOHC) (together, the Fund Counterparties), and defendant Highland Capital Management, L.P. (Highland Capital) (together with the Fund Counterparties, Highland), for the securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs).

The court conducted a bench trial from July 9 through July 27, 2018 on plaintiffs' third and fourth causes of action in the second amended complaint for breach of contract, and on defendant Highland Capital's first and second counterclaims against plaintiff UBS Securities

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

LLC for breach of contract and unjust enrichment, respectively.[1] Based on the credible evidence at trial, the court now makes the following determination as to the breach of contract causes of action and counterclaims.[2]

In April and May 2007, the parties agreed to pursue a collateralized debt obligations transaction governed by an Engagement Letter, a Synthetic Warehouse Agreement for CDSs, and a Warehouse Agreement for CLOs (Original Agreements). (DX 4, DX 5, DX 6.)[3] It is undisputed that UBS acted as the "financial arranger" for the transaction and was responsible for financing the acquisition of assets, which would then be held in portfolios, which the parties refer to as the Cash Warehouse and the Synthetic Warehouse or collectively as the Knox Warehouse. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 5.)[4] Highland Capital acted as the "Servicer" and was responsible for identifying the specific CLOs to be securitized and the Reference Obligations for the CDSs to be securitized. (Ps.'s Findings, ¶¶ 3, 4; Ds.'s Findings, ¶¶ 6, 8.)

In furtherance of the transaction, UBS acquired assets with a notional value of $818 million. (Ps.'s Findings, ¶ 6; Ds.'s Findings, ¶ 5.) There were 33 CLO tranches in the Cash Warehouse, with a notional value of $174 million. UBS paid $170 or $170.5 million to acquire the CLOs because the bonds were purchased at a slight discount on their par value. (Ds.' Findings, ¶ 6; Ps.'s Findings, ¶ 6.) The Synthetic Warehouse contained 87 credit default swaps,

---

[1] By decision on the record on May 1, 2018 (NYSCEF Doc. No. 494), the court bifurcated the trial. The decision held that the breach of contract claims, which were to be heard by the court, would be determined prior to claims, including fraudulent conveyance claims, which were to be heard by a jury.

[2] At the trial, the parties agreed to the submission of extensive evidence, subject to standing objections. This decision is not based on such evidence, unless the decision expressly states otherwise.

[3] Defendants' and plaintiffs' trial exhibits will be referred to as DX _ and PX _, respectively. The parties' demonstrative exhibits will be referred to as DX Demo. _ and PX Demo. _

[4] The Fund Counterparties' and Highland Capital Management, L.P.'s Proposed Findings of Fact and Conclusions of Law will be referred to as Ds.'s Findings. Plaintiffs' Proposed Findings of Fact and Conclusions of Law will be referred to as Ps.'s Findings. Defendants' Findings are all identified by paragraph number. Plaintiffs' Findings of Fact are identified by paragraph number, while their Findings of Law are identified only by page number.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

with a notional value of $644 million. (Ds.'s Findings, ¶ 7; Ps.'s Findings, ¶ 6.). UBS served as the protection seller on all of the CDSs. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 8.) For five of the CDSs, with a notional value of $45 million, Lehman Brothers Special Financing, Inc. (Lehman) acted as the protection buyer (Lehman Swaps). (Ps.'s Findings, ¶ 8; Ds.'s Findings, ¶ 9; PX 755[5], at 1.) For 20 of the CDSs, with a notional value of $124 million, UBS acted as both protection seller and protection buyer (the Internal Swaps). (Ds.'s Findings, ¶ 10; Ps.'s Findings, ¶ 9; PX 755, at 4-5.)

The Original Agreements expired by their terms on August 15, 2007. (PX 1, at 1.) The parties agreed to restructure the transaction, signing a new Engagement Letter, the 2008 Cash Warehouse Agreement (CWA), and the 2008 Synthetic Warehouse Agreement (SWA), as of March 14, 2008. (See PX 1, PX 2, PX 3.) As of March 14, 2008, the Knox assets had lost significant value and the parties agreed that, given the market conditions existing as of the date of the restructured transaction, it was not then feasible to sell the securities and close the transaction. (Ps.'s Findings, ¶ 20; 2008 Engagement Letter [PX 1, at 8].)

As discussed further below, the Synthetic Warehouse Agreement provided for the roll-over of the Existing Credit Default Swaps and the Existing Collateral Portfolio into the warehouses created under the 2008 restructured transaction. (See SWA, Whereas Clause 5.) Section 12 of the Synthetic Warehouse Agreement provided that the Fund Counterparties would transfer additional cash and securities "to secure its obligations to UBS" under the SWA and the CWA. In particular, this Section required the Fund Counterparties to make an Initial Deposit of $20 million in cash and approximately $54 million in Eligible Securities on the date of the

[5] PX 755 is a document that that was jointly prepared by plaintiffs' and defendants' counsel so that specific information regarding the Knox Warehouse assets could be found in one place. (Trial Tr. at 858.)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

execution of the SWA. (Id., § 12 [A].) The SWA contained a collateral call provision under which UBS was required to track its CDS and Cash Exposure to losses, as defined under the Agreement, on a semi-monthly basis, and the Fund Counterparties were required to deposit an additional $10 million in collateral (cash and/or Eligible Securities) for every $100 million increase in the defined Deposit Threshold Exposure Amount. (Id., §§ 12 [B], [C].)

It is undisputed that, pursuant to Section 12 (C) of the SWA, UBS made a first collateral call for $10 million on September 17, 2008 (PX 4), and a second collateral call for $10 million on October 21, 2008 (PX 5), both of which were satisfied by the Fund Counterparties. (Testimony of Keith Grimaldi, Former Head of UBS's CDO Secondary Trading Desk, Trial Transcript (Tr.) at 81, 112, 119.)

On November 7, 2008, UBS issued the third, and final, collateral call to the Fund Counterparties for an additional $10 million. (PX 6.) It is undisputed that the Fund Counterparties did not meet this collateral call. (Ds.'s Findings, ¶ 17; Ps.'s Findings, ¶¶ 43-47).[6]

On December 3, 2008, UBS sent a notice to Highland stating that, to date, no deposits have been made in response to the November collateral call, and that "a Termination Date has occurred under the Warehouse Agreements and a termination date has occurred under the Engagement Letter." (PX 7; PX 9.) The notice further stated that "UBS is forbearing from exercising its remedies [under the Agreements] for a period of two Business Days from the date hereof in order to permit [the Fund Counterparties] to pay the Additional Deposits by 5 pm New York time on December 5, 2008." (Id.) On December 5, 2008, UBS sent an additional notice to

[6] It is undisputed that the Fund Counterparties offered to post CLO assets to satisfy the third collateral call and that UBS did not accept that collateral. UBS's Keith Grimaldi testified that UBS rejected the CLOs because "at that time the marketplace was declining and declining rapidly. We thought there would be more declines, so we collectively made a decision that we wanted cash or government securities ... that would be easily liquid and reflect better value." (Trial Tr. at 122.) Defendants stipulated that UBS had the right to insist on cash. (See Statement of Andrew Cruciani [Ds.'s Atty.], Trial Tr. at 1736.)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

Highland stating that the Additional Deposit has not been made, and that "[c]onsequently, UBS will proceed to exercise the rights and remedies available to it under the Warehouse Agreements, the Engagement Letter, at law and otherwise." (PX 8.)

THIRD COLLATERAL CALL

As a threshold matter, the parties dispute whether the third collateral call was proper. Highland argues that UBS should not have included the 20 Internal Swaps in calculating the Deposit Threshold Exposure Amount "because the Intradesk [i.e., Internal] Swaps were not Existing Credit Default Swaps under the SWA . . . ." (Ds.'s Findings, ¶ 28.) Highland also claims that the Lehman Swaps were not properly included in the calculation because they had been terminated prior to the third collateral call. (See id., ¶ 27.)

More particularly, Highland claims that the Internal Swaps were not Existing Credit Default Swaps because they were not documented, as allegedly required by Section 3 of the SWA, in the form of an ISDA Master Agreement and ISDA Confirmation. (Ds.'s Findings, ¶¶ 28, 30-31.) UBS does not dispute that the Internal Swaps were not documented by the ISDA Master Agreement and Confirmation, but argues that Section 3 does not require such documentation for the Internal Swaps. (Ps.'s Findings, at 24-25.)[7]

Resolution of this dispute involves an issue of contract interpretation. It is well settled that the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace v 600 Partners Co., 86 NY2d 543, 548 [1995]; W.W.W. Assocs., Inc. v Giancontieri, 77 NY2d 157, 162 [1990].) Written agreements are to be construed in accordance with the parties' intent, and "the best evidence of what parties to a written agreement

[7] It is undisputed that the Internal Swaps were documented by electronic trading tickets but not by ISDA Master Agreements or ISDA trade confirmations. (Ds.'s Findings,¶ 10; Ps.'s Findings,¶¶ 16-17; PX 29 [electronic trading tickets].)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

intend is what they say in their writing." (Schron v Troutman Sanders LLP, 20 NY3d 430, 436 [2013] [internal quotation marks, brackets, and citation omitted].) The court should determine from contractual language, without regard to extrinsic evidence, whether there is any ambiguity. (Chimart Assocs. v Paul, 66 NY2d 570, 573 [1986].) Extrinsic or parol evidence "may not be considered when the intent of the parties can be gleaned from the face of the instrument." (Id. at 572-573.) "Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous. . . ." (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002].) "Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties' intent, or where its terms are subject to more than one reasonable interpretation." (Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 25 NY3d 675, 680 [2015] [internal quotation marks and citation omitted].)

It is also well settled that a court should "construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose." (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; National Conversion Corp. v Cedar Bldg. Corp., 23 NY2d 621, 625 [1969] [holding that "[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency"].)

Applying these precepts, the court holds that the SWA is not ambiguous with respect to the requirements for documentation of CDSs, that Section 3 of the SWA only applies to CDSs in which a third party is the protection buyer, and that this Section does not require ISDA documentation for the Internal Swaps.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

The SWA defines "Existing Credit Default Swap[s]" as the CDSs "that were the subject of the Original Synthetic Warehouse Agreement." (SWA, Whereas Clause 5.) Section 3 of the SWA provides, in pertinent part:

> "Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation. . . . Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached [to the SWA] . . . ."

As the Agreement that governs the securitization of Existing and Additional Credit Default Swaps, the SWA contains numerous detailed provisions regarding the accumulation and disposition of these financial instruments. Section 3, which pertains to documentation of the swaps, is the only provision in the SWA that is limited to CDSs in which UBS is the Seller and a counterparty is the Buyer. All of the other provisions of the SWA refer to CDSs without such limitation.

Moreover, like SWA Section 3, the Original SWA provided: "Each Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the counterparty, which documents are confidential between UBS and each counterparty and (ii) the Confirmation attached hereto. . . ." (Original SWA, § 3 [NYSCEF Doc. No. 626].) It is undisputed, however, that the Internal Swaps were included in the Original SWA portfolio but were not documented by the ISDA Master Agreement or Confirmation. It is also undisputed that the Internal Swaps were nevertheless again included in the Initial Net Exposure Amount in the SWA for the restructured transaction. (Testimony of Peter Vinella [Highland's expert in

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097//2009
NYSCEF DOC. NO. 659 RECEIVED NYSCEF: 09//14//2020

structured financial products], Trial Tr. at 1097, 1124-1125 [acknowledging that the Internal Swaps were included in the Initial Net Exposure Amount].)

Initial Net Exposure Amount is defined in the SWA[8] as "111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof [i.e., the March 14, 2008 "as of" date of the SWA] exceeds the Initial Deposit." As defined in SWA Section 12 (A), the Initial Deposit is the deposit of approximately $74,000,000 in cash and Eligible Securities made on the date of execution of the SWA. Aggregate Net Exposure Amount is defined as the amount by which CDS Exposure and Cash Exposure, as of the date of the collateral calculation, exceed the balance on deposit in the Deposit Account plus Positive Carry with respect to each Collateral Obligation.[9] As discussed above, Section 12 (C) of the SWA requires a deposit of $10 million in additional collateral when the Deposit Threshold Exposure Amount is greater than or equal to $100 million. The Deposit Threshold Exposure Amount is defined in the SWA as "the amount, if any, by which (i) the Aggregate Net Exposure Amount as of [the date of the collateral calculation] exceeds (ii) the Initial Net Exposure Amount." The Initial Net Exposure Amount, which includes the Internal Swaps, is thus integral to the calculation of the Deposit Threshold Exposure Amount.

Based on this reading of the SWA as a whole, the court concludes that the Internal Swaps were Existing Credit Default Swaps within the meaning of the SWA. The lack of ISDA documentation was therefore not a bar to their inclusion in the collateral call calculation.

The court rejects Highland's further contention that the Internal Swaps should not have been included because there was "no economic consequence" to UBS from these swaps. (Ds.'s

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[8] Definitions are found in the Definitions section of the SWA (SWA, Ex. A), unless the term is defined in a particular provision of the SWA, in which case the provision will be cited.
[9] Positive Carry is defined in the CWA. As explained by Adam Warren, Highland's damages expert, carry includes interest payments from the CLOs. (Warren Testimony, Trial Tr. at 1299.)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

Findings, ¶ 33.) The complex formula set forth in Section 12 for calculating the exposure of UBS on the assets in the warehouse that would trigger a collateral call does not contain any requirement that UBS include in the calculation only assets for which it was at risk of sustaining actual losses.[10]

The court further holds that, although the Internal Swaps were properly included in the third collateral call calculation, the Lehman Swaps were not. The parties do not dispute that the Lehman Swaps had been terminated based on the Event of Default that occurred upon Lehman's filing for bankruptcy on September 15, 2008. (DX 87 [UBS Default Notice].) Highland asserts, and UBS does not persuasively counter, that the Lehman Swaps should not have been included in the third collateral call. Indeed, UBS's Grimaldi forthrightly acknowledged that, given the termination, there should not have been "markdowns" on the Lehman Swaps. (Grimaldi Testimony, Trial Tr. at 297-298.).

Highland contends, based on the inclusion of the Lehman Swaps and Internal Swaps in the third collateral call calculation, that UBS "committed a prior material breach by failing to

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[10] In view of this holding that the Internal Swaps were properly included in the collateral call calculation pursuant to the unambiguous terms of the SWA, the court has not considered parol evidence on the issue.

The court thus rejects Highland's request for a finding that UBS admitted that the SWA required ISDA documentation of the Internal Swaps. (See Ds.'s Findings, ¶¶ 30-31.) This request is based on testimony of UBS's Keith Grimaldi who, when shown Section 3 during cross-examination and asked if every CDS was required to have ISDA documentation, responded: "According to the language, yes." (Grimaldi Testimony, Trial Tr. at 262-264.) Even if this evidence were properly considered, Highland's reliance on this answer ignores that Mr. Grimaldi further testified that ISDA documentation would not be "filled out" until the assets were transferred in the securitization. (Id. at 267-270.)

The court further notes that Highland requests a finding, arguably in support of its claim that the CDSs were not Existing Credit Default Swaps, that a CDS "cannot be created with the same legal entity on both sides of the transaction. . . ." (Ds.'s Findings, ¶ 29.) Even if parol evidence were properly considered, there was substantial evidence in the record that internal swaps were common in securitizations of synthetic assets. (LeRoux Testimony, Trial Tr. at 1673-1676; (Vinella Testimony, Trial Tr. at 1158-1162 [denying that intracompany swaps are "economic transactions" but acknowledging their use in CLO securitizations].)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

properly calculate the collateral call[]." (Ds.'s Findings, ¶¶ 23, 27-28.) In support of this contention, Highland relies on the testimony of its expert Peter Vinella. According to Mr. Vinella's own analysis, however, if the Lehman swaps are excluded from the calculation for the third collateral call, but the Internal Swaps are included, the total increase in the Deposit Threshold Exposure Amount as of November 4, 2008 is $328.62 million—an amount greater than the $300 million required to authorize the third collateral call pursuant to Section 12 of the SWA. (Vinella Testimony, Trial Tr. at 1122-1139; DX Demo. 8.) Louis Dudney, UBS's expert in forensic accounting and damages (Trial Tr. at 824), analyzed Mr. Vinella's testimony and confirmed, using the same numbers as Mr. Vinella, that the Deposit Threshold Exposure Amount still exceeded $300 million on November 4, 2008, after excluding the Lehman Swaps but including the Internal Swaps. (PX Demo. 20 [accepted without objection in lieu of Dudney rebuttal testimony, Trial Tr. at 1870-1871].)

Based on this credible testimony that the threshold for the collateral call was met without the Lehman Swaps, the court holds that the third collateral call did not constitute a material breach of the contract, notwithstanding UBS's improper inclusion of the Lehman Swaps in the calculation.[11] (See generally Awards.Com v Kinko's, Inc., 42 AD3d 178, 187 [1st Dept 2007], affd 14 NY3d 791, 793 [2010]; Frank Felix Assocs., Ltd. v Austin Drugs, Inc., 111 F3d 284, 289 [2d Cir 1997] [under New York law, for a breach to be material, "it must go to the root of the agreement between the parties"] [internal quotation marks and citations omitted].)

[11] In view of this holding that the Deposit Threshold Exposure Amount exceeded $300 million as of November 7, 2008, the court need not reach UBS's contention that the collateral call was proper because the Deposit Threshold Exposure Amount exceeded $300 million as of December 2, 2008, prior to the termination of the transaction. (Ps.'s Findings, at 15 n 10.)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

As discussed above, there is no dispute that the Fund Counterparties failed to meet the third collateral call. The court accordingly finds that the Fund Counterparties breached the SWA and turns to the issue of damages.

DAMAGES

Designation of Ineligible Securities

A critical issue in determining UBS's damages is whether UBS may recover damages for CDSs that UBS retained after its termination of the 2008 transaction, under these circumstances in which UBS did not designate the underlying reference obligations for any of the CDSs as "Ineligible Securities." Resolution of this issue requires interpretation of the SWA. Highland and UBS both contend that the SWA is unambiguous as to whether Ineligible Securities must be designated, but assert fundamentally inconsistent readings of the Agreement. (Ds.'s Findings, ¶¶ 44-49; see Ps.'s Findings, at 29 n 21.)

As held above, the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace, 86 NY2d at 548.) Ambiguity will be found to arise where the terms of a contract are "subject to more than one reasonable interpretation." (Universal Am. Corp., 25 NY3d at 680 [internal quotation marks and citation omitted].) As also held above, a court should construe a contract so as to give full meaning and effect to its material provisions, and should read the contract as a whole and so as not to render any portion meaningless, if possible. (See Beal Sav. Bank, 8 NY3d at 324-25.)

Sections 5 (A), 5 (B), and 6 of the SWA are relevant to the calculation of CDS damages: Section 5 (A) provides for the calculation of losses with respect to CDSs removed from the warehouse during the term of the Agreement or "otherwise pursuant to Section 6"; Section 5 (B) (2) governs the calculation of losses upon a closing; and Section 6 governs this calculation in the event of a failure to close, incorporating terms from Sections 5 (A) and 5 (B).

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

Section 6 provides in pertinent part:

> "(A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
>
> . . .
>
> (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

CDS Losses are in turn defined in Section 5 (B) (2), the closing provision, as:

> "(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, plus (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, plus (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the 'CDS Losses') . . . ."

Relying on the requirement in the definition of CDS Losses that Reference Obligations be designated as Ineligible Securities, Highland argues that "[t]he term 'CDS Losses'

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

unambiguously limits UBS's recovery for unrealized (mark-to-market) losses to securities designated as 'Ineligible Securities,' and the Court is bound to enforce the agreement pursuant to its unambiguous terms." (Ds.'s Findings, ¶ 46.) Put another way, Highland argues that UBS may recover mark-to-market losses only on CDSs that have been designated Ineligible Securities. (Id., ¶ 53.)[12] UBS asserts, among other things, that under Section 6, UBS may terminate, novate, or retain CDSs regardless of eligibility, that ineligibility designations are not relevant absent a closing, and that Highland's reading renders meaningless other provisions of the SWA. (Ps.'s Findings, at 29 n 21.)

Upon close reading of the SWA, the court concludes that the SWA is not ambiguous with respect to ineligibility designations and that, under Section 6, upon the failure to close UBS is entitled to retain CDSs and to recover losses for the retained CDSs, without first designating the underlying Reference Obligations as Ineligible Securities. Section 6 (A) expressly provides for UBS to terminate or novate the CDSs, and does not require UBS to first make such designation. Although Section 6 (A) does not also, by its terms, provide for UBS to retain CDSs, a reading of the contract as a whole leaves no question that UBS was not only entitled to retain the CDSs upon the failure to close, but also that it was entitled to recover losses on the retained CDSs without first designating the underlying Reference Obligations as Ineligible.[13]

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[12] Highland's damages expert, Adam Warren, testified that realized losses are losses sustained where a transaction has been closed out and an actual cash payment has been made. (Warren Testimony, Trial Tr. at 1249, 1253.) He also testified that, in his opinion, there were no unrealized losses in the Synthetic Warehouse because no assets had been designated as ineligible. (Id. at 1257 ["[O]ur computation is that there are no unrealized losses in the Synthetic Warehouse because of the need to . . . create a designation of ineligible. And we saw no evidence of any Synthetic Warehouse asset being designated ineligible"].)

[13] In its decision of defendants' motion for summary judgment, this court held that it could not determine on the record of that motion whether the SWA was ambiguous with respect to UBS's entitlement to recover losses on retained CDSs, pursuant to Section 6, without a prior designation of such assets as Ineligible Securities. (2017 NY Slip Op. 30546[U], 2017 WL 1103879, * 4-7 [Sup Ct, NY County Mar. 13 2017], affd 159 AD3d 512, lv dismissed 32 NY3d 1080.) With the benefit of the parties' extensive trial briefing on this issue, the court now concludes, for the reasons discussed further in the text, that the agreement is not ambiguous.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

As the above-quoted definition of CDS Losses in Section 5 (B) (2) shows, this definition relates to Credit Default Swaps which, upon a closing, have been "terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security . . . ." After setting forth the definition of CDS Losses (and CDS Gains) in the context of a closing, Section 5 (B) (2) further provides: "To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof."

Significantly, while Section 6 (C) incorporates the defined term CDS Losses, the term CDS Losses also incorporates both the definition of Ineligible Security and the term Replacement Losses from Section 5 (A). These incorporated terms modify the definition of CDS Losses where a closing does not occur.

The definition of Ineligible Security pertains to securities that are ineligible for securitization upon a closing. The SWA thus defines Ineligible Security, in pertinent part, as "any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination . . . ." (SWA, Exhibit A-2 [emphasis added].)

Section 5 (A), which defines the term Replacement Losses, distinguishes between such Losses sustained during the term of the Agreement and those sustained upon termination in the event of a failure to close pursuant to Section 6. Section 5 (A) primarily addresses the removal of CDSs from the warehouse "during the term of this [the SWA] Agreement" where "a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria" that must be met for securitization. This section provides that "UBS shall be entitled in

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio." Section 5 (A), however, continues:

> "To the extent any such Credit Default Swaps are terminated or novated, or at UBS's discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps [according to the formula that follows]."

(emphasis added). Section 5 (A) then sets forth a formula for calculating Replacement Gain and Replacement Loss, which specifically provides for such calculation not only upon termination or novation but also upon UBS's retention of the CDSs. (SWA § 5 [A] [1] – [3].)

Section 5 (A) thus clearly contemplates that UBS may novate, terminate, or retain CDSs both during the term of the Agreement and in the event of a failure to close. The Section affords UBS the discretion to terminate, novate, or retain CDSs "pursuant to Section 6," as distinct from its discretion to do so upon a designation of the underlying Reference Obligation as Ineligible during the term of the Agreement. Any other reading would render meaningless the Section 5 (A) provision "or otherwise pursuant to Section 6."

Moreover, in order to reconcile all of the provisions of the SWA, the Section 5 (B) (2) definition of CDS Losses, when used in Section 6, cannot be construed as requiring a designation of Ineligible Securities. As discussed above, Ineligible Securities are defined as securities ineligible for sale at a closing. Section 5 (B) (2), which governs the calculation of losses where a closing will occur, requires the designation of Ineligible Securities to facilitate the parties' calculation of losses on assets deemed ineligible for inclusion in the securitization that will occur upon the closing. When a closing will not occur, none of the CDSs or other assets will be securitized, and there is no need to distinguish between eligible and ineligible assets. While the

definition of CDS Losses with the Ineligible Security designation requirement serves the purposes of Section 5 (B) (2) in the event of a closing, it is inconsistent with the CDS Loss calculation required in Section 6 where the closing does not occur.

Contrary to Highland's apparent contention (Ds.'s Findings, ¶ 46), a reading of the CDS Loss provision in Section 6 to permit calculation of losses on retained assets without an Ineligible Security designation does not violate the fundamental precept that a defined term in a contract must be given effect. (See generally Mionis v Bank Julius Baer & Co., 301 AD2d 104, 109 [1st Dept 2002].) Rather, the CDS Loss definition, as used in Section 6, is modified by the contractual provisions discussed above.

Although inartfully drafted, the SWA is not ambiguous. If the contract is read as a whole, and all of the provisions are given meaning, it is reasonably susceptible to only one meaning—namely, that CDS Losses for retained assets may be recovered without a designation of the underlying Reference Obligations as Ineligible Securities where, as here, the contract has been terminated before the closing.[14] The court accordingly holds that UBS is entitled to recover damages for the retained CDSs in the Synthetic Warehouse.[15]

Calculation of Damages

As discussed above, UBS terminated the transaction based on the Fund Counterparties'

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[14] The court notes that the SWA and the Cash Warehouse Agreement (CWA) both contain provisions which state that the two agreements "set forth the entire understanding of the parties hereto relating to the subject matter hereof . . . ." (SWA, § 18; CWA, § 18.) Assuming, without deciding, that these agreements should be read together in construing the SWA, the court finds that, although the assets at issue in the SWA and the CWA have markedly different attributes, the CWA is consistent with the SWA to the extent that the CWA permits UBS, in the event a closing does not occur, to retain and recover for losses on the CLOs that are the subject of the CWA, without a designation of the CLOs as Ineligible Securities. (See CWA, §§ 5 [A], 7 [A].)

[15] In view of this holding that the SWA is not ambiguous as to whether CDS losses may be recovered without designation of the underlying Reference Obligations as Ineligible Securities, the court has not considered any parol evidence, either documentary or testimonial, in construing the SWA in this regard. Without limiting the foregoing, the court has not considered prior drafts of the SWA, which Highland offered in the event parol evidence were to be admitted. (See Ds.'s Findings, ¶ 53.)

failure to meet the third collateral call. UBS sent Highland a notice, dated December 3, 2008, stating that a Termination Date had occurred under the Warehouse Agreements but that it would forbear from exercising its remedies for two days to permit the Fund Counterparties to meet this collateral call. (PX 7.) UBS then sent a further notice to Highland, dated December 5, 2008, stating that it would exercise its remedies as the call had not been met. (PX 8.) UBS held a public auction of the assets in the Knox Warehouse on December 16, 2008. By notice dated December 19, 2008, UBS demanded payment for its claimed losses based on the results of the auction—$157,949,885.47 for the assets in the Cash Warehouse (PX 10) and $587,357,060.59 for the assets in the Synthetic Warehouse. (PX 11.) UBS also notified Highland that it elected to retain the Collateral Obligations in the Cash Warehouse. (PX 10.)

CDS Damages

Highland argues that even if the recovery of damages for the CDSs is not barred by UBS's failure to designate the Reference Obligations for the CDSs as Ineligible Securities (a claim this court has rejected above), UBS has not proved damages for these CDSs. Specifically, Highland contends that UBS did not comply with the contractual requirements for calculation of losses because its post-termination auction was untimely and otherwise improper. (Ds.'s Findings, ¶¶ 57-59.) Highland also contends that UBS's marks do not otherwise "establish a reasonable connection between the asset value and UBS's alleged damages." (Id., ¶¶ 60-65.) UBS disputes these assertions. (Ps.'s Findings, at 29-31.)

Sections 6 (C), 5 (B) (2), and 5 (A) (3) are the provisions of the SWA that govern the calculation of CDS Losses upon termination. Section 6 (C) provides in full:

> "To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

> amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

As discussed above, the definition of CDS Losses in Section 5 (B) (2) includes Replacement Loss, the calculation of which is governed by Section 5 (A). With respect to Replacement Loss relating to CDSs that are retained, Section 5 (A) (3) provides in full:

> "To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS if unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS's position under such Credit Default Swap."

The SWA, by its terms, thus contemplated that payment would be made within three days after the Termination Date, subject to notice from UBS. As the SWA provided for an auction to calculate the amount of the losses, it also contemplated that an auction could or would occur within that three day period.

By the terms of UBS's notices to Highland, although a Termination Date had occurred as of December 3, UBS extended the Fund Counterparties' time to meet the third collateral call until December 5. The court thus finds that the Fund Counterparties' breach of the Agreements for failure to meet the third collateral call occurred on December 5. UBS did not conduct the auction to calculate the CDS Losses until December 16.

UBS's delay of approximately 11 days in conducting the auction, while seemingly de minimis, in fact had momentous financial consequences, given that the delay occurred in the wake of the September 15, 2008 Lehman bankruptcy filing and at the height of the financial crisis. With the market spiraling downward, the CDS losses ascertained through the auction process were approximately $117 million more than the losses calculated by using UBS's marks

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

on either December 3 or December 5. (PX Demo. 21; DX Demo. 12 [showing UBS and Highland marks as of December 3 and 5; PX Demo. 28 at 60 [Ps.'s Closing Statement Demonstrative Exhibit, acknowledging that CDS damages, as calculated based on the auction, exceeded the losses calculated using UBS's marks on December 3 and 5 by over $117 million].)[16]

UBS contends that the three day payment period was for its benefit and that it "could exercise its right to get paid after three business days without waiver." (Ps.'s Findings, at 28.) The court agrees that UBS's delay in demanding payment or holding the auction did not result in a waiver of its right to seek payment of its damages resulting from the Fund Counterparties' breach. (See SWA § 20 ["Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver hereof. . . ."].) Highland correctly contends, however, that the delayed auction could not serve as a basis for calculating UBS's damages because the results of the auction did not reflect market conditions as of the date of termination or breach. (See Ds.'s Findings, ¶ 57.)

As explained by the Court of Appeals:

> "It has long been recognized that the theory underlying damages is to make good or replace the loss caused by the breach of contract. Damages are intended to return the parties to the point at which the breach arose and to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach."

(Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256, 261 [1998] [internal citations omitted].)

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[16] At the trial, the parties stipulated to dispense with rebuttal testimony from plaintiffs' damages expert, Louis Dudney and, in lieu of such testimony, to the admission into evidence of plaintiffs' Demonstrative Exhibits 20 and 21, and defendants' Demonstrative Exhibit 12. (Trial Tr. at 1868, 1870 [Stipulation].) PX Demo. 21 and DX Demo. 12, which were prepared by Mr. Dudney, calculated damages using plaintiffs' and defendants' marks, respectively, on December 3 and 5, 2008. (Trial Tr. at 1870-1877.)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

It is further settled that damages need not be proven with mathematical certainty. It is sufficient that a reasonable basis for the calculation of damages be shown. (See generally J.R. Loftus, Inc. v White, 85 NY2d 874, 877 [1995] ["While a plaintiff may recover damages when the measure of damages is unavoidably uncertain or difficult to ascertain, a reasonable connection between a plaintiff's proof and a [] determination of damages is nevertheless necessary"]; CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, *2 [US Dist Ct SD NY, Sept. 29, 2011] ["The law of New York is clear that once the fact of damage has been established, the non-breaching party need only provide a stable foundation for a reasonable estimate [of damages]" [internal quotation marks and citations omitted, brackets in original].)

UBS's December 16, 2008 auction cannot satisfy either of these standards because, as held above, the auction did not provide a reliable basis for determining UBS's losses at, or even shortly after, the breach, due to the exceptional circumstances presented by the financial crisis.[17] The court accordingly turns to the alternative basis advanced by UBS for the calculation of damages—its marks on December 5, 2008. (Ps.'s Findings, at 29.)

It is well settled that "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma v Skaarup Ship Mgt. Corp., 916 F2d 820, 825 [2d Cir 1990], cert denied 499 US 907 [1991] [applying New York law and citing Simon v Electrospace

[17] There is authority that "in accordance with the objective that a party seeking recovery for breach of contract is entitled 'to be made whole' as of the time of the breach, the [factfinder] should be able to make its valuation determination on all relevant elements of the case, whether dated prebreach, on the date of breach, or 'some short time period thereafter.'" (Credit Suisse First Boston v Utrecht-America Fin. Co., 84 AD3d 579, 580 [1st Dept 2011] [quoting Boyce v Soundview Tech. Group, Inc., 464 F3d 376, 389 [2d Cir 2006] [other internal quotation marks and citations omitted].) Although the auction was held shortly after the breach, this authority does not support calculation of damages based on the auction results, as the auction did not provide a reliable basis for assessing the losses.

Corp., 28 NY2d 136, 145-146 [1971], motion to amend remittitur and clarify denied 28 NY2d 809].) In accordance with the objective that the injured party be made whole, "damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.)

UBS offered credible testimony that its December 5, 2008 marks reasonably reflected the market value of the CDSs as of the December 5 breach date. In particular, Timothy LeRoux, who at the time of the transaction was second in command to Mr. Grimaldi on the UBS trading desk (LeRoux Testimony, Trial Tr. at 1640), gave credible testimony that, in the regular course of business, the trading desk "marked to market" hundreds of CLO assets, and every week or two was required to assign values on every one of the assets, both cash and synthetic, in the Knox Warehouse. (Id. at 1724.) Mr. LeRoux also described the marking process and identified information, including public information as to offers and bids on CDSs in the marketplace, that UBS considered in developing "objective" prices. (Id. at 1727, 1745-1750.) Mr. Grimaldi also testified that, although the trading desk performed the mark-to-market valuation of the assets in the Knox Warehouse, the UBS valuation group established oversight due to the volatility of the market and "would look at other market observations and make sure that those [the trading desk marks] were in line with the marketplace." (Grimaldi Testimony, Trial Tr. at 207-208.)

Highland does not dispute that the mark-to-market process is a methodology for determining loss in market value of retained assets. (See e.g. Testimony of Adam Warren [Highland's damages expert], Trial Tr. at 1268-1269; Testimony of Philip Braner [Highland former executive], Trial Tr. at 469-472; Testimony of UBS's Timothy LeRoux, Trial Tr. at 1640, 1727-1729.)

Rather, in claiming that UBS's marks are not competent evidence on which to award damages, Highland suggests that the setting of marks by the trading group involved a conflict of

interest, because the trading group's bonuses were based on the performance of the mark-to-mark assets and the group had the incentive to inflate the value of the assets. (Ds.s' Findings, ¶¶ 61-62.) Highland makes no showing that UBS inflated the value of the CDSs or that trading groups do not routinely develop marks. Moreover, Highland's assertion that "UBS's trading group alone set the marks for the Knox Warehouse assets" (Ds.'s Findings, ¶ 62) ignores UBS's credible testimony, discussed above, that the valuation group exercised oversight in connection with the development of the marks.

Highland's further assertion that its own marks are more reliable (Ds.'s Findings, ¶ 65) is unsupported by persuasive evidence. Philip Braner, who ultimately became Chief Operating Officer of the Highland Capital Management CLO Group and COO of Highland Financial Partners (Braner Testimony, Trial Tr. at 397), testified that Highland was itself tracking marks on the assets in the Knox Warehouse (id. at 615) and had an "internal valuation team that was responsible for accumulating marks" in a process in which portfolio managers of the Highland funds participated. (See id. at 467.) While Highland appears to assert that its marks are more reliable than UBS's because they were set by a valuation team, Highland fails to show that the role of its valuation team differed in any material respect from that of the UBS valuation group that performed oversight on its trading group in the marking process.

Notably, Highland fails to explain how its methodology in setting marks was more reliable than UBS's. Adam Warren, Highland's damages expert, forthrightly testified that he was not opining on the reasonableness of any marks in this case (Warren Testimony, Trial Tr. at 1247-1248), and he did not in fact give any testimony on whether UBS's or Highland's marks were more reliable.

The evidence at trial also demonstrated that Highland, like UBS, set marks on the CDSs on an asset by asset basis from March 2008 through October 2008. While there were differences

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

between Highland's and UBS's marks during this period, the Highland and UBS marks in the month of October were substantially similar. The difference in the marks did not escalate substantially until November 2008. (PX Demo. 9, at 4.) Mr. Dudney gave testimony, which was not disputed, that although Highland, like UBS, had been setting marks on an asset by asset basis, Highland stopped doing so as of October 2008 and, in a November 30, 2008 calculation of damages, attributed the same mark (37) to each asset. (Dudney Testimony, Trial Tr. at 883-884, 905-909, DX 116.) Highland offered no explanation for this change in methodology. Mr. Dudney, in contrast, gave plausible testimony that this use of the same mark did not make sense given the deterioration of the market. (Id. at 908.)

In sum, based on the credible evidence at the trial, the court holds that UBS has met its burden of demonstrating that its December 5, 2008 marks provide a reasonable basis, under the circumstances, for the calculation of damages at the time of the breach. In so holding, the court rejects Highland's not fully articulated contention that only an auction, and not a mark-to-market methodology, is a reliable method for calculating damages. (See Ds.'s Findings, ¶ 59.) Highland's reliance on the testimony of its damages expert, Adam Warren, in support of this contention (see id.) is misplaced. While Mr. Warren testified that CDSs are "bespoke contracts," he did not give any testimony that an auction was required to ascertain their value.

Further, as held above, the auction did not provide a reliable basis for determining UBS's damages due to the volatility of the market at the time of the auction. It bears emphasis that, although the market was also volatile at the time the December 5, 2008 marks were accumulated, Highland has not advanced an alternative, other than the non-viable auction, to the mark-to-market valuation methodology. Nor has Highland made any showing that the market value of

the CDSs was not reasonably determinable as of the date of breach using the mark-to-market valuation methodology.[18]

The court further holds that UBS has met its burden of demonstrating the reasonableness of its calculation of damages using those marks. UBS's and Highland's experts both provided the court with calculations of damages using UBS's and Highland's marks, respectively, as of December 5, 2008. Mr. Warren confirmed that his main differences with Mr. Dudney regarding the calculation of damages for the Synthetic Warehouse were that Mr. Dudney considered it appropriate, and he did not, to include damages for unrealized CDS losses and for the 20 Internal Swaps in which UBS was both the protection seller and the protection buyer. (Warren Testimony, Trial Tr. at 1298; DX Demo. 12; PX Demo. 21; see also Dudney Testimony, Trial Tr. at 1004.)

Mr. Warren excluded from his damages calculation unrealized CDS losses for all CDSs as to which a designation of ineligibility had not been made. He testified that his basis for doing so was his understanding of the contract—i.e, his understanding that the SWA required such designation—and not industry custom. (Warren Testimony, Trial Tr. at 1281-1282.) For the reasons discussed above, this court has rejected Highland's position that the SWA should be

[18] In its post-trial briefing, Highland sought a finding that if UBS is held to be entitled to recover damages for CDS losses, Highland's marks are more reliable than UBS's for determining those damages. (Ds.'s Findings, ¶ 65.) Highland did not argue that the market value of the losses could not reasonably be determined by using marks. In contrast, in support of its claim that it is entitled to an offset against CDS damages for post-breach termination payments received by UBS on the CDSs, Highland questioned the accuracy of the market valuation at the time of the breach. Highland thus asserted in a footnote: "Given the scant market pricing data available at the time of the breach, post-termination payments and asset dispositions are relevant for the additional reason that they provide a more accurate measurement of the actual value of the Knox assets." (Ds.'s Post-Trial Memo., at 8 n 5.) This assertion is unsupported by any citation to trial testimony. More important, at the trial Highland did not offer any expert testimony that the mark-to-market methodology was not a reliable basis for calculating the CDS damages. For the additional reasons set forth in the section of this decision on Highland's requested Offset for Post-Breach Appreciation In CDS Asset Value, the court finds that offset of post-breach payments received by UBS on the CDSs would be inconsistent with calculation of UBS's damages based on their market value at the time of the breach.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

construed as requiring ineligibility designations as a condition of the inclusion of unrealized losses on the CDSs in the calculation of damages. Also for the reasons discussed above, the court has rejected Highland's position that the losses on the Internal Swaps should not be included in this calculation.

Review of the experts' calculations shows, moreover, that when such losses are included in the calculations, the difference between Highland's and UBS's totals is substantially reduced. As previously noted, the parties stipulated to the introduction into evidence of charts prepared by Mr. Dudney comparing his and Mr. Warren's calculations of CDS damages using UBS's and Highland's marks as of December 5, 2008. Using Highland's marks, Mr. Dudney calculated CDS mark-to-market losses of $388,284,750, compared to Mr. Warren's calculation of $26,952,895—a difference of $361,331,855. (DX Demo. 12.) Using UBS's marks, Mr. Dudney calculated losses of $470,113,605, compared to Mr. Warren's calculation of $26,952,895—a difference of $443,160,710. (PX Demo. 21.)

The difference in the totals is largely due to Mr. Warren's exclusion from his calculation of all unrealized CDS losses and all losses for the Internal Swaps. (Warren Testimony, Trial Tr. at 1296-1299.) His calculation of $26,952,895 for CDS losses includes only realized CDS losses. (Id. at 1250.) According to Mr. Warren, the Internal Swaps account for $93,952,173 of the CDS damages using UBS's marks, or $68,801,027 using Highland's marks. (Id. at 1269.) Although Mr. Warren disputed UBS's entitlement to unrealized CDS losses, he performed a calculation including such losses. Using UBS's marks as of December 5, 2008, these losses totaled $355,487,606. (DX Demo. 10, at 14.) Using Highland's marks as of that date, these losses totaled $299,118,973. (Warren Testimony, Trial Tr. at 1269; DX Demo. 10, at 14.) Mr. Warren's total, using UBS's marks, for the Internal Swaps ($93,952.173) and the unrealized CDS losses ($355,487,606) was $449,439,779. (DX Demo. 10, at 14.) As stated above, Mr. Dudney's

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

calculation of total Synthetic Warehouse losses, using UBS's December 5, 2008 marks, was $470,113,605. Given the magnitude of the damages, this disparity is not material.

The court accordingly holds that UBS incurred losses in the Synthetic Warehouse of $470,113,605 as of December 5, 2008, the date of the breach, subject to the adjustments discussed below.

CLO Damages

Highland does not dispute that unrealized losses are recoverable for the CLO assets. (Warren Testimony, Trial Tr. at 1293.) Moreover, UBS's (Mr. Dudney's) and Highland's (Mr. Warren's) calculations of the CLO losses as of December 5, 2008 are the same: Using Highland's marks, these losses were $106,157,101. (DX Demo. 12, at 2.) Using UBS's marks, the losses were $128,848,101. (PX Demo. 21.) Having concluded that UBS's damages were properly calculated based on UBS's marks as of December 5, 2008, the date of the breach, the court holds that UBS incurred losses in the Cash Warehouse of $128,848,101, subject to the adjustments discussed below.

Adjustments to Damages Calculation

In calculating the Synthetic and Cash Warehouse losses, Mr. Dudney and Mr. Warren made adjustments for the same items: carry (premiums and interest), collateral value, financing fees, and financing savings. Mr. Dudney's adjustment of $79,587,557 and Mr. Warren's adjustment of $76,632,634 did not differ materially. (PX Demo. 21.) According to Mr. Warren, the difference of approximately $3 million is due to Mr. Warren's exclusion of the Internal Swaps in calculating the carry. (Warren Testimony, Trial Tr. at 1298-1299.) As the court has held that the Internal Swaps were properly included in the damages calculation, Mr. Dudney's adjustments will be accepted.

Reducing UBS's damages by the adjustments, the court holds that UBS sustained total

damages of $519,374,149 (Cash Warehouse Losses of $128,848,101 plus Synthetic Warehouse Losses of $470,113,605 minus $79,587,557).

OFFSETS

Offset for Post-Breach Appreciation In CDS Asset Value

A central issue in this action is whether Highland is entitled to an offset against UBS's damages for appreciation in the value of the CDSs after the breach. The parties stipulated that UBS received post-breach termination payments net of carry on the CDSs, including the Internal Swaps, in the amount of $202,223,059. (DX 491.) It is undisputed that these payments were received months and, for many of the CDSs, years after the termination of the transaction. (Ds.'s Post-Trial Memo., at 10 [acknowledging that UBS "liquidated the assets years later"]; PX 335 [spreadsheet showing termination dates for CDSs through 2011].)

Highland argues that, at the time the transaction was terminated, "frozen credit markets had created a severe mismatch between the assets' alleged market value and their actual value based on their cash flows." (Ds.'s Post-Trial Memo., at 10.) Highland further argues that UBS was able to sell these assets for hundreds of millions of dollars more than their December 2008 marks and that, while UBS is entitled to retain the sale proceeds, "it cannot ignore these monies in calculating the harm it actually suffered." (Id. at 11.) According to Highland, if disposition of the assets after the termination is not considered, UBS will receive "an enormous windfall." (Id.) UBS acknowledges that if a non-breaching party obtains a benefit "because of the breach," the benefit must be offset against the non-breaching party's damages. (Ps.'s Post-Trial Memo., at 6 [emphasis UBS's].) UBS argues, however, that the Fund Counterparties' breach was not a but for cause of the post-breach payments UBS received for the CDSs. (Id. at 7.) Rather, subsequent gains that resulted from UBS's disposition of the assets were "the result of UBS's contractual rights [to retain the assets] in the event of any termination and of its subsequent

investment strategy." (Id. at 14.) According to UBS, the Fund Counterparties' proposed offset would deprive UBS of the benefit of the bargain and result in a windfall for the Fund Counterparties. (Id.)

As discussed above, contract damages are intended to make "good or replace the loss" caused to a party by the breach of contract and "to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.) Further, "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma, 916 F2d at 825 [applying New York law and citing Simon, 28 NY2d at 145-146].)

The calculation of damages is also subject to the fundamental precept that where a non-breaching party acquires a "benefit or opportunity for benefit . . . because of the breach, a balance must be struck between benefit and loss" and the benefit must be offset against the non-breaching party's damages. (Indu Craft, Inc. v Bank of Baroda, 47 F3d 490, 495 [2d Cir 1995] [applying New York law]; accord Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, 289 [SD NY 2010] ["[I]f a victim derives a benefit from the breaching party's breach of contract, the breaching party only is responsible for the victim's net loss"], reconsideration denied 2010 WL 3431132; Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, 84 [1987], rearg denied 70 NY2d 694 [holding, in a "cover" action governed by the Uniform Commercial Code, that "'[g]ains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach'"] [quoting 5 Corbin, Contracts § 1041].)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

Here, although UBS and Highland agree that any benefit derived by UBS because of the breach must be offset against its losses, neither party has cited, and the court's own research has not located, any case in which a court has considered how to apply this precept to a non-breaching party's retention of assets upon a failed securitization transaction and realization of subsequent gains. There is, however, a substantial body of law involving a breaching party's failure to deliver or purchase assets subject to fluctuations in value, in which the courts have assessed damages based on the market value of the assets at the time of breach and have declined to consider any subsequent increases or decreases in value of the assets. As discussed further below, the court concludes that these cases are inconsistent with the offset sought by Highland.

As the Second Circuit has explained in reviewing this body of law, New York courts reject damage awards "based on what 'the actual economic conditions and performance' were in light of hindsight." (Sharma, 916 F2d at 826, quoting Aroneck v Atkin, 90 AD2d 966, 967 [4th Dept 1982], lv denied 59 NY2d 601 [1983].) "They have explicitly rejected the use of subsequent changes in value or profits where they would increase an award, and where they would decrease the award." (Sharma, 916 F2d at 826 [internal citations omitted].)

In the securities context, courts have repeatedly held that the damages for failure to deliver or purchase shares of stock should be based on their market value at the time of breach, and not on any subsequent increase or decrease in their value. (Simon, 28 NY2d at 145-146 [where the seller breached a contract to deliver shares, holding: "The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach. The rule is precisely the same when the breach of contract is nondelivery of shares of stock"] [internal citations omitted]; Aroneck, 90 AD2d at 967 [where the buyer breached a contract to purchase shares, holding that

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

damages should be based on market value at the time of breach, and rejecting the buyer's theory that the "value should be based on the actual economic conditions and performance" of the company post-breach]; Emposimato v CIFC Acquisition Corp., 89 AD3d 418, 421 [1st Dept 2011] [quoting Aroneck and citing Simon in holding that "[i]n the case of a breach of contract to sell securities, expectation damages are calculated as 'the difference between the agreed price of the shares and the fair market value at the time of the breach'"]; Oscar Gruss & Son, Inc. v Hollander, 337 F3d 186, 197 [2d Cir 2003] [following Simon and Aroneck in a case involving the defendant's breach of a contract to deliver warrants]; see also Kaminsky v Herrick Feinstein LLP, 59 AD3d 1, 11-12 [1st Dept 2008], lv denied 12 NY3d 715 [2009] [holding that damages for breach of contract to deliver shares prior to an initial public offering (IPO) should be awarded based on the value of the shares at time of the breach, not their higher value post-IPO].)

The court holds that these cases involve transactions that are analogous to (although far less complex than) the transaction at issue, and apply the same measure of damages that this court has adopted above—namely, the measure of damages based on the market value of the assets on the date of the breach. These cases accordingly govern the calculation of damages here. The court notes, moreover, that sound reasons support the application of this measure of damages without consideration of post-breach fluctuations in the value of the assets.

As the Second Circuit reasoned, a contrary rule that would permit calculation of damages at the time of trial "would be a two-edged sword, because courts would have to diminish damage awards where the value of the item decreased or where losses were encountered subsequent to the breach as well as enhance them where conditions improve. However, New York courts have expressly refused to adopt this 'wait and see' theory of

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

damages." (Sharma, 916 F2d at 826.) In addition, although the court does not adjust for changes in the value of the shares when calculating damages according to the date of breach measure, the parties themselves can protect against changes in value by hedging or acquiring shares in the market. As the Second Circuit further reasoned: "To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under- or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income." (Sharma, 916 F2d at 826; see also Simon, 28 NY2d at 146 [where the seller breached a contract to deliver shares, reasoning that "[i]f plaintiff were anxious to own the shares rather than obtain their value, he was free to purchase them in the market. His cause of action should not and may not be converted into carrying a market 'call' or 'warrant' to acquire the stock on demand if the price rose above its value as reflected in his cause of action"].)

The court further holds that application of the date of breach measure of damages, without adjustments for fluctuations in the value of the assets, will serve the objective of putting UBS in the position it would have been in had the contract been performed. If the securitization had closed, UBS would have been entitled, under the express terms of the SWA, to novate to the Issuer its positions as protection seller on all of the eligible Knox CDSs. (SWA § 5 [B] [1].) As a result of the breach, UBS was forced to assume a substantial risk of loss under the CDSs that would have been novated to the Issuer had the closing occurred. As discussed above, the loss in market value of the retained CDSs as of the date of breach was determined using the mark-to-market methodology. More specifically, as confirmed by both UBS's and Highland's experts, the mark-to-market losses calculated as of the date of breach represent the cost to UBS to exit the CDSs—

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

that is, the payments to be made to third-parties so that they would take on, and UBS could extricate itself from, the risk. (Warren Testimony, Trial Tr. at 1304-1306; Dudney Testimony, Trial Tr. at 894-895.) A damage award for these mark-to-market losses will therefore compensate UBS for the exposure to risk that it would not have faced had the contract been performed.

To the extent that Highland contends that a damage award is not appropriate for these mark-to-market losses because the losses were not realized, the court rejects that contention. The damage award is appropriate, notwithstanding that the losses were not realized, because, as held above, the contract affords UBS the right of recovery for such losses. (See CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, * 2 [US Dist Ct SD NY, Sept. 29, 2011] [reasoning that, where the contractual definition of loss for the purpose of calculating damages did not require the CDS protection buyer to sustain "actual loss," "[t]he absence of an actual loss on a Reference Obligation transaction, thus, is not a barrier to [the protection buyer's] recovery. . ."] [emphasis in original].)

The court further holds that the record does not support Highland's contention that UBS's post-breach gains were realized because of the breach, and that this case therefore falls under the line of authority that requires an offset for such gains. Highland in effect contends that because UBS retained the CDSs as a result of the breach, it also realized the post-breach gains because of the breach.[19] That conclusion does not follow. As held

[19] In so holding, the court rejects UBS's contention that it would have been entitled to retain the CDS assets, regardless of the Fund Counterparties' breach, because the Agreements would have terminated in any event as of March 14, 2009, at which point UBS would have had the contractual right to retain the assets. (Ps.'s Post-Trial Memo., at 8.) This assertion is not only speculative but ignores that UBS did in fact acquire the right to retain the assets upon the Fund Counterparties' breach of the Agreements as a result of their failure to meet the third collateral call. For the reasons discussed in the text, however, the court cannot accept Highland's further contention that UBS realized gains on the retained CDSs because of the breach.

above, UBS had a contractual right to retain the CDSs upon the termination of the transaction based on the Fund Counterparties' breach of the SWA by failing to meet the collateral call. The SWA does not contain any provision that limited UBS's discretion as to when to dispose of the assets after termination. Rather, as UBS persuasively argues, the gains realized as a result of the post-breach disposition of assets were attributable not to the breach itself but to UBS's assumption of the risk of loss on the CDSs and its investment strategy as to when to dispose of them based on its assessment of the market. (See G & R Corp. v American Sec. Trust Co., 523 F2d 1164, 1175 [DC Cir 1975] [holding that while the transfer of property to the plaintiffs was caused by the defendant's breach, the profit realized by the plaintiffs from a post-breach sale was not "caused by the breach" but was "attributable to the [plaintiffs'] decision to hold [the property] until [its] condition and the market were favorable for sale"].)

Nor does Highland successfully argue that the gains realized by UBS on the post-breach disposition of the assets must be offset under general principles which require a party who suffers damages as a result of another's breach to take reasonable steps to mitigate its damages. (See Ds.'s Post-Trial Memo., at 5-9.) Highland cites cases requiring mitigation in connection with the purchase and sale of securities and transactions in other markets. (See e.g. Drummond v Morgan Stanley & Co., Inc., No. 95 Civ. 2011 [DC], 1996 WL 631723, * 2-3 [US Dist Ct SD NY, Oct. 31, 1996] [holding that where the buyer breached a contract to purchase securities, the seller must take steps to mitigate its damages by selling the securities within "a reasonable period of time"]; Saboundjian v Bank Audi (USA), 157 AD2d 278, 284-285 [1st Dept 1990] [holding that where a broker failed to execute a customer's speculative currency exchange order, the customer was required to direct execution of the trade "within a reasonable time after he learned that it had not been effected earlier"].)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

These cases are inapposite, as the SWA affords UBS the contractual right to retain the securities upon the Fund Counterparties' breach. Ironically, although purporting to rely on these cases, which in fact require that the non-breaching party mitigate within a reasonable period of time, Highland argues not that UBS was required to dispose of the CDSs within a reasonable period of time after the breach but that it was required to hold them for months and, indeed, years, until the market improved. Highland thus asserts that UBS reasonably mitigated by "holding (as opposed to fire selling) fully performing interest and premium-bearing assets in the face of a dysfunctional market. . . ," and that "UBS's mitigation was not only reasonable, but required by law." (Ds.'s Post-Trial Memo., at 7.) Put another way, Highland does not identify a specific date or dates by which UBS was required to mitigate. To the contrary, without citation to any legal authority, Highland argues that UBS was required to hold the assets for an indefinite period, until the market improved, to minimize its losses.

The mitigation cases provide no support for Highland's assertion that UBS's disposition, months and years after the breach, of assets that it had a contractual right to retain, constitutes mitigation.[20] Rather, in claiming that it is entitled to "offsets" for the post-breach gains realized by UBS, Highland appears in effect to advance a measure of damages that is patently inconsistent with the fundamental tenet of the date of breach measure of damages—namely, that a non-breaching party's damages for assets with a determinable market value must be calculated

[20] Nor does Highland cite any other authority that supports its claim that it is entitled to offsets for post-breach gains realized by UBS. Cases in which a party has a duty to cover (see e.g. Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, supra) are inapposite, given UBS's contractual right to retain the CDSs upon the breach. Cases in which a party is on both sides of a securities transaction are factually dissimilar. (See Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, supra [where the plaintiff company breached a contract affording the defendant bondholders the right to convert their bonds to the company's stock, and the bondholders held open existing short positions in the company's stock on which they realized post-breach gains, the company was entitled to an offset]; see also Minpeco, S.A. v Conticommodity Servs., Inc., 676 F Supp 486, 490 [SD NY 1987] [holding that the plaintiff's losses on short futures positions on silver as a result of the defendants' manipulation of the market were required to be offset by the plaintiff's profits on physical silver positions also then held by the plaintiff].)

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

at the date of breach, not based on hindsight, and that neither party can select the date on which the damages calculation will be most favorable to it. Thus, a non-breaching buyer cannot select the date on which the assets "had their highest value or a period of time that was profitable but that excludes periods when losses occurred." (See Sharma, 916 F2d at 826.) Similarly, a breaching buyer cannot avoid or reduce the damages caused by its breach by invoking post-breach decreases in the value of the assets. (See id.)

The court accordingly holds that Highland's request for an offset for UBS's post-breach gains from the disposition of the CDSs must be denied.

Offset for Right of First Refusal Counterclaim

Highland Capital Management, L.P. (Highland Capital) seeks judgment on its first counterclaim against plaintiff UBS Securities LLC for breach of the Cash Warehouse Agreement provision affording it the right to purchase CLO assets in the event UBS elected to retain such assets upon the termination of the Agreement. Section 5 (A) of the CWA provides that in event of failure to close, "UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures." The Liquidation Procedures set forth in section 7 (A) of the CWA provide in pertinent part:

> "If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS's Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value."

Section 7 (A) further provides that if UBS elects to sell CLOs upon termination, "the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

the highest third party bid received by UBS for the purchase of such Collateral Obligation."

It is undisputed that Highland Capital notified UBS that it sought to purchase six of the CLOs with a bid price of $1.9 million and a notional value of $44 million, but that it sought to provide the funds for the purchase, and to settle the trades, in the name of one of its affiliates, CLO Value Fund. (Ds.'s Findings, ¶ 21.) UBS declined to agree to the sale to the Highland Capital affiliate. (Id.; DX 72; PX 292.)

The court is unpersuaded that a Highland Capital affiliate had the right, under the CWA, to purchase the CLOs. Section 7 (A), which governs the disposition of the CLO assets upon termination, expressly affords one UBS Affiliate the right to purchase CLOs. In contrast, this Section affords the right to purchase only to the Servicer, and not to any other Highland entity. The Servicer is defined as Highland Capital Management, L.P. (CWA, First Paragraph.) Reading the CWA as a whole, the court further finds that no other provision modifies or is inconsistent with this limitation. On the contrary, where the acts of Highland Capital's Affiliates were implicated, the CWA expressly referred to the Affiliates. (CWA, § 13 [B] [limiting the liability of the "Servicer" "for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders [and others] under or in connection with this Agreement, or for any decrease in the value of the Collateral Portfolio . . . ."].)[21] The court accordingly holds that the CWA unambiguously provides that the right to purchase retained CLOs is limited, among the Highland entities, to Highland Capital.

In view of this holding that the CWA is not ambiguous with respect to Highland's post-

[21] The parties to the transaction knew how to afford rights to purchase assets to Affiliates of the Servicer. The SWA provides that if the closing fails to occur, UBS may, with the consent of the related counterparty, novate CDSs "to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer). . . ." (SWA § 6 [A].) The omission from the CWA of authorization to Affiliate(s) of the Servicer to purchase CLOs is therefore notable. Moreover, Highland Capital does not claim that the concerns—regulatory and other—that are implicated in novating CDSs are comparable to those in selling CLOs.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

termination right to purchase CLOs, the court rejects Highland's contention that the court should consider evidence allegedly showing that UBS and Highland Capital had a prior course of conduct in which UBS permitted Highland Capital to settle trades "at its fund level." (Ds.'s Findings, ¶¶ 80-81.) Parol evidence of course of conduct is not admissible to construe an unambiguous contract. (See e.g. Sigismondi v Queens Transit Corp., 38 AD2d 71, 73 [2d Dept 1971], affd no opinion 32 NY2d 745 [1973]; Evans v Famous Music Corp., 1 NY3d 452, 459 [2004].)

The court further notes that even if Highland Capital could recover on its counterclaim, the damages it seeks are not recoverable. Highland Capital seeks a finding that because the CLOs continued to perform until maturity, "it would have profited $46 million" if it had been permitted to exercise its right of first refusal to purchase the CLOs. (Ds.'s Findings, ¶ 82; DX Demo. 9.) As Highland Capital acknowledges, however, the market value of the CLOs at the time of breach was $1,934,214. (DX Demo. 9.) The measure of damages, as explained above in connection with Highland Capital's claim for offsets against UBS's damages, is the market value of the assets as of the date of breach, not the increase in their value in the indefinite future.

Offset for Unjust Enrichment

Highland Capital also seeks judgment on its second counterclaim alleging that UBS was unjustly enriched by its failure to permit Highland Capital, through its affiliate CLO Value Fund, to purchase the Collateral Obligations upon termination. This claim for unjust enrichment is not maintainable as the right to purchase is governed by contract—the CWA. (See generally Pappas v Tzolis, 20 NY3d 228, 234 [2012], rearg denied 20 NY3d 1075 [2013]; Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388-389 [1987].)

Offset for Settlements with Highland Affiliates

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

Highland also requests an offset for settlements with three Highland Affiliates—Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Offshore), and Highland Crusader Holding Corporation (Crusader Holding) (collectively, the Settling Highland Affiliates). Credit Strategies and Crusader Offshore were defendants in this action. UBS asserted its fraudulent conveyance cause of action against them as well as all of the other defendants. (Second Am Compl., Fifth Cause of Action.) Crusader Holding was a defendant in a separate complaint, which asserted a fraudulent conveyance cause of action against it. (UBS Secs. LLC v Highland Crusader Holding Corp., Sup Ct, NY County, Index No. 652646/11, Compl., First Cause of Action; Ps.'s Letters, dated July 21, 2015 [NYSCEF Doc. No. 397]; Jan. 7, 2016 [NYSCEF Doc. No. 398].) This court bifurcated the trial of this action, directing that it would first hold a bench trial on the breach of contract claims, which were triable by the court and are the subject of this decision, and that the fraudulent conveyance and other claims, which are triable by a jury, would be heard subsequently. (May 1, 2018 Decision on the Record [NYSCEF Doc. No. 494].)

The parties dispute whether the confidential settlements (DX 76 id and DX 77 id) may be considered in this action. They also dispute whether the settlements may be offset, pursuant to statute or case law, against the damages awarded by this decision to UBS against the Fund Counterparties on the breach of contract causes of action. (See Ps.'s Post-Trial Memo., at 14-21; Ds.'s Post-Trial Memo., at 15-19, 21-24.)

Even assuming, without deciding, that the damages may be subject to offset by the settlements, the determination of whether or to what extent the offset should be allowed must await determination of the jury trial. Where an offset for a settlement is sought, "the damages against which the settlement is sought to be applied should be determined so a proper comparison can be made between them and the damages covered by the settlement." (Carter v.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

State of New York, 139 Misc 2d 423, 429 [Ct Cl, 1988], affd 154 AD2d 642 [2d Dept 1989]; accord Moller v North Shore Univ. Hosp., 12 F3d 13, 16 [2d Cir 1993] [applying New York law].)

Here, Highland argues that the causes of action against the settling defendants are "wholly derivative of its breach-of-contract claims against the Fund counterparties." (Ds.'s Post-Trial Memo., at 16.) UBS persuasively argues, in opposition, that the fraudulent conveyance causes of action seek relief in addition to compensatory damages, including imposition of a constructive trust and punitive damages. (Ps.'s Post-Trial Memo, at 22-24; Second Am. Compl., at 57-58.) Moreover, the damages, if any, that will be awarded against the Fund Counterparties and Highland Capital on the fraudulent conveyance cause of action remain to be determined at the jury trial. On this record the court accordingly cannot compare the settlements with the fraudulent conveyance damages. Nor is there any basis for the court to determine the extent to which the settlements cover the same damages, or damages that overlap with, the breach of contract damages awarded to UBS against the Fund Counterparties by this decision. The determination of the offset issue will therefore be deferred pending the jury trial. As it appears, however, that Highland may be entitled to an offset for some or all of the settlement amounts, the court will stay enforcement, to the extent of the settlement amount ($70.5 million), of the judgment to be awarded to UBS against the Fund Counterparties for the damages for breach of contract.

Conclusion

UBS is entitled to damages for $519,374,149 on the third and fourth causes of action against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements. Enforcement of the judgment for this amount will be stayed up to $70.5 million, the amount of the settlements with the Settling Highland Affiliates.

FILED: NEW YORK COUNTY CLERK 09/14/2020 06:00 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 650 RECEIVED NYSCEF: 09/14/2020

ORDER

It is hereby ORDERED that the parties shall meet and confer with a view to reaching agreement on the form of the judgment, including but not limited to the Allocation Percentages of CDO Fund and SOHC, and the award of interest. If the parties are unable to reach such agreement, they shall promptly settle judgment; and it is further

ORDERED that this decision shall be filed under seal for ten business days from the date hereof to afford the parties the opportunity to confer and to advise the court as to whether there is any information in the decision which is claimed by any party to be confidential. The parties shall, within five business days of the date hereof, submit a joint letter of no more than three pages, advising the court of their positions on this issue. The letter should be accompanied by a joint copy of the decision, highlighting the portion(s) of the decision which each party claims is confidential and should be redacted in the decision that will be publicly filed; and it is further

ORDERED that the parties shall telephone the court on a conference call within five business days of the date hereof (at a specific date and time to be arranged with the Clerk of Part 60) to discuss the above confidentiality issue as well as the jury trial phase of this action. The parties should be prepared to address whether, or to what extent, the jury trial may proceed in light of Highland Capital's filing of a bankruptcy petition.[22]

This constitutes the decision and order of the court.

Dated: New York, New York
November 14, 2019

MARCY FRIEDMAN, J.S.C.

[22] By letter dated October 17, 2019 (NYSCEF Doc. No. 640), counsel (Reid Collins & Tsai LLP) for Highland Capital, the Fund Counterparties and other Highland defendants, advised the court of Highland Capital's bankruptcy filing, and represented that the automatic stay does not preclude decision of the causes of action against the Fund Counterparties or the counterclaim by Highland Capital. This letter sought to reserve defendants' position on the effect of the bankruptcy filing on subsequent proceedings in this action.

EXHIBIT 4

Claim #190 Date Filed: 6/26/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

UBS Securities LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
UBS Securities LLC Attn: Suzanne Forster 1285 Avenue of the Americas New York, New York 10019	
Contact phone 2127133432	Contact phone
Contact email suzanne.forster@ubs.com	Contact email

(see summary page for notice party information)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☐ No
☑ Yes. Who made the earlier filing? UBS AG, London Branch - this is a joint litigation claim.

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 1,039,957,799.40 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Litigation - See attached addendum

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/26/2020
MM / DD / YYYY

/s/Asif Attarwala
Signature

Print the name of the person who is completing and signing this claim:

Name: Asif Attarwala
First name Middle name Last name

Title: Associate

Company: Latham and Watkins LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone: 3128767667

Email: asif.attarwala@lw.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
UBS Securities LLC
Attn: Suzanne Forster
1285 Avenue of the Americas

New York, New York, 10019

Phone:
2127133432
Phone 2:

Fax:

Email:
suzanne.forster@ubs.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
Yes
Related Claim Filed By:
UBS AG, London Branch - this is a joint litigation claim. See attached addendum

Filing Party:
Authorized agent

Disbursement/Notice Parties:
Latham and Watkins LLP
Andrew Clubok
555 Eleventh Street, NW

Washington, D.C., 2004-1304

Phone:
2026373323
Phone 2:

Fax:

E-mail:
andrew.clubok@lw.com

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Litigation - See attached addendum

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
1,039,957,799.40

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Asif Attarwala on 26-Jun-2020 5:10:38 p.m. Eastern Time
Title:
Associate
Company:
Latham and Watkins LLP

Optional Signature Address:
Asif Attarwala
330 North Wabash Ave.
Suite 2800
Chicago, IL, 60611
Telephone Number:
3128767667
Email:
asif.attarwala@lw.com

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11 (SGJ)
Debtor.	)	

ADDENDUM TO PROOF OF CLAIM FILED BY UBS AG, LONDON BRANCH

1. UBS Securities LLC hereby submits this addendum to its proof of claim (together, the "**Proof of Claim**") against Highland Capital Management, L.P. (the "**Debtor**") in the above-captioned chapter 11 case (the "**Chapter 11 Case**").

2. UBS Securities LLC and UBS AG, London Branch (together, the "**Claimant**" or "**UBS**") each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant's Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS's Motion for Relief*

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

from the Automatic Stay to Proceed with State Court Action [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

Factual Background

A. The Knox Transaction

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.[2]

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of $818 million in Knox Assets. (*Id.*)

[2] The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.

4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional $70 million in cash and securities as collateral (the "**Initial Restructuring Collateral**"), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled $70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address

this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties "will in aggregate bear 100% of the risk" for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional $10 million in collateral for each $100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by $100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of $200 million (bringing the aggregate losses to over $400 million).

(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over $520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, "as of the end of the year 2008," Highland knew that the Fund Counterparties owed Claimant "hundreds of millions of dollars in connection with the Knox Warehouse Agreements." (Travers Dep. at 261:8-20).) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, "devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible." (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment

for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("**HFP**"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.

16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred ***to*** the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor's affiliates—all at the Debtor's direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely "insolvent." (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally ***no*** assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant's ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant's rights to those amounts. Such actions and omissions constitute breaches of the Debtor's duty of good faith and fair dealing under the Warehouse Agreements.

B. The State Court Action and the Debtor's Efforts to Avoid Paying Claimant

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the "**State Court**") against the Debtor and the Fund Counterparties. With knowledge of Claimant's lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant's ability to recover the

amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the "**Affiliated Transferee Defendants**"), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, i.e., solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit

Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.[3] (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately $70,500,000) to

[3] Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to $1,039,957,799.44, consisting of $519,374,149.00 in damages and $520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of $128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final $1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.

26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

Reservation of Rights

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this

Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

Right of Setoff and Recoupment

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

Notice

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC
1285 Avenue of the Americas
New York, NY 10019
Attn: Suzanne Forster
Telephone: (212) 713-3432
Email: suzanne.forster@ubs.com

With a copy to:

John Lantz
UBS Securities LLC
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 713-1371
Email: john.lantz@ubs.com

Andrew Clubok
Sarah Tomkowiak
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200
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Exhibit A

Second Amended Complaint

FILED: NEW YORK COUNTY CLERK 05/11/2011 INDEX NO. 650097/2009
NYSCEF DOC. NO. 242 RECEIVED NYSCEF: 05/11/2011

CONFIDENTIAL MATERIAL SUBJECT TO THE STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION HAS BEEN REDACTED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG, LONDON BRANCH, Plaintiffs, -against- HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC., Defendants.	Index No. 650097/2009 (I.A.S. Part 60, Fried, J.) **SECOND AMENDED COMPLAINT**

Plaintiffs, UBS Securities LLC ("UBSS") and UBS AG, London Branch ("UBS AG") (collectively, "UBS"), for their Second Amended Complaint allege against defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P. ("Highland Financial"), Highland Credit Strategies Master Fund, L.P. ("Credit Strategies"), Highland Crusader Offshore Partners, L.P. (the "Crusader Fund"), Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund"), and Strand Advisors, Inc. ("Strand"), as follows:

NATURE OF THE ACTION

1. UBS brings this action to recover damages in excess of $686 million resulting from the wrongful conduct of defendants, based on causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment.

2. Counterclaim-plaintiff Highland Capital Management, L.P. ("Highland Capital") is a defendant in the action commenced by UBS (the "Highland Capital Action") concurrently with the filing of the First Amended Complaint in this action. The Highland Capital Action was consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the "Consolidated Action"). Together with Highland Capital, the Fund Counterparties fraudulently induced UBS to restructure a transaction to avoid Highland Capital's and the Fund Counterparties' contractual obligation to pay UBS over $86 million. Once Highland Capital and the Fund Counterparties succeeded in misleading UBS into restructuring the original transaction, Highland Capital and its affiliates made it impossible for the Fund Counterparties to meet their obligations to UBS by stripping the Fund Counterparties of their valuable assets through fraudulent conveyances and otherwise dealing in bad faith with their contractual obligations to UBS.

3. When UBS finally terminated the restructured transaction and demanded payment from Highland Capital and the Fund Counterparties, it was owed in excess of $686 million that the Fund Counterparties could not pay because of the misappropriations and improper transfers of assets directed by Highland Capital and the Fund Counterparties. Even after UBS demanded payment, Highland Capital and defendants engaged in further unlawful conduct that harmed UBS by [redacted]

SUMMARY OF THE ACTION

4. This action arises out of Highland Capital's efforts in the Spring of 2007 to sponsor a collateralized debt obligation ("CDO") securitization (the "Original Engagement"). In connection with the Original Engagement, UBS agreed to finance the purchase of various collateralized loan obligation ("CLO") securities, as well as credit default swap obligations that referenced similar CLO securities. UBS agreed to hold or "warehouse" the CLO securities and credit default swaps (collectively, the "Warehouse Assets" or "Warehouse Facility") for Highland Capital's benefit.

5. On or about August 15, 2007, the Original Engagement terminated by its terms without the contemplated securitization having occurred. As a result of the termination, Highland Capital and two of its affiliates, the Fund Counterparties, owed UBS in excess of $86 million related to the decline in the value of the Warehouse Assets.

6. Instead of paying UBS what it was owed, Highland Capital and the Fund Counterparties fraudulently induced UBS to restructure the Original Engagement by providing UBS with false, incomplete and otherwise misleading information concerning the Fund Counterparties' finances and assets. Using both affirmative material misrepresentations and omissions (material facts or information needed to be disclosed to make the statements actually made not misleading, and which were not disclosed, are referred to hereinafter as "Omissions"), Highland Capital, its principals and the Fund Counterparties misled UBS regarding the financial health of the Fund Counterparties and their creditworthiness, thereby causing UBS to forego recovering its losses from Highland Capital in favor of agreeing to restructure the terms of the parties' prior agreements (the "Restructured Transaction").

7. For example, the strength of the Fund Counterparties' financial statements, and their purported ability to use the hundreds of millions of dollars worth of assets

reflected therein to satisfy future obligations to UBS under the Warehouse Agreements were material to UBS's decision to agree to the restructuring. Consequently, in connection with negotiating the Restructured Transaction, UBS conditioned any restructuring on the Fund Counterparties' ability to post $70 million in cash and securities as collateral (the "Initial Restructuring Collateral") with State Street Bank and Trust Company ("State Street"), in which UBS would hold a security interest. [redacted] Highland Capital and the Fund Counterparties were able to conceal important information about the Fund Counterparties' financial weakness that was both quantitatively and qualitatively material to UBS, and which would have caused UBS not to enter the Restructured Transaction.

8. Similarly, while negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties provided UBS with financial reports and statements for the Fund Counterparties. The financial information that Highland Capital and the Fund Counterparties provided to UBS contained materially false and misleading information and Omissions concerning the financial condition of the Fund Counterparties. Among other things, [redacted]

9. In reliance on material misstatements and Omissions made by Highland Capital and the Fund Counterparties, UBS agreed to restructure the Original Engagement, and

thereby were fraudulently induced to give up contractual rights under the terms of the Original Engagement. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe that Highland Capital and its affiliates would provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets, as they in fact did.

10. Had UBS known that the Fund Counterparties could not [redacted], it would not have gone forward with the Restructured Transaction. UBS never would have agreed to the Restructured Transaction had it known prior to entering the Restructured Transaction the true status of the Fund Counterparties' financial condition and the true fair market value of the Fund Counterparties' holdings that would have been available to satisfy their then-existing and future obligations to UBS. UBS's losses described herein were directly and proximately caused by the conduct of Highland Capital and the defendants as described herein.

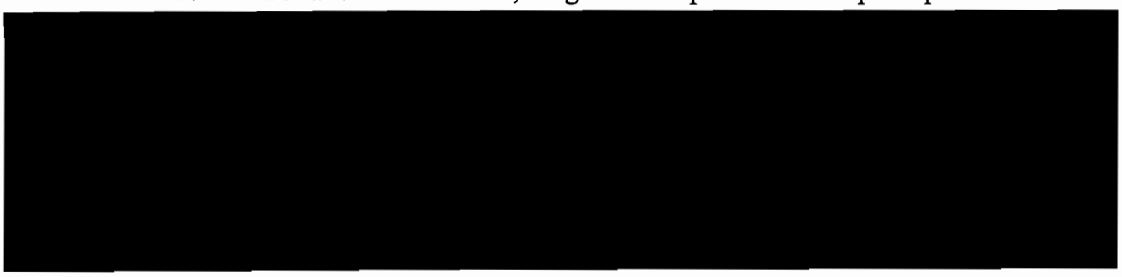
11. Almost immediately after UBS agreed to the Restructured Transaction, Highland Capital began the process of making it impossible for the Fund Counterparties to ever repay UBS what they owed. In particular, exercising its control over the Fund Counterparties, Highland Capital caused the Fund Counterparties to transfer cash for the benefit of Highland Capital and its principals, and, separately, in violation of UBS's rights, [redacted], all during a time when the Fund Counterparties owed UBS hundreds of millions of dollars.

12. For example, in or around May 2008, Highland Capital caused the dissipation of approximately $100 million in cash that CDO Fund held after it sold a long position in a company called SunCom Wireless. Highland Capital drained CDO Fund's cash resources despite CDO Fund's ever-increasing obligations to UBS. Highland Capital's bad faith conduct caused injury to UBS by making it impossible for the Fund Counterparties to satisfy their contractual obligations to UBS.

13. In September 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Because Highland Capital had routinely taken cash out of the Fund Counterparties, the Fund Counterparties were undercapitalized and lacked assets and liquidity to meet UBS's demands for additional collateral.

14. Highland Capital and its principals, including its president and founder, James D. Dondero, knew that if the Fund Counterparties defaulted on their obligations to UBS (or any other creditor), Highland Capital's ability to conduct business in the financial community and to keep or solicit investors would be harmed. Investors in Highland Capital's hedge fund family would withdraw their investments. In addition, creditors would take actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights. Highland Capital and its principals were concerned that upon the disclosure of the true state of their affairs, their business would collapse.

15. To avoid that result, Highland Capital and its principals resorted to



[redacted]

16. Highland Capital's and its principals' belated attempt to protect their reputation by continuing to fraudulently portray the Fund Counterparties as viable independent entities was ultimately unsuccessful. By late October 2008, Highland Capital could no longer continue to prop up the Fund Counterparties.

17. On or about November 11, 2008, UBS demanded additional collateral from the Fund Counterparties. The Fund Counterparties defaulted. On December 3, 2008, UBS terminated the Restructured Transaction. As a result of UBS's termination of the Restructured Transaction, the Fund Counterparties were contractually obligated to pay UBS in excess of $686 million.

18. On or about February 24, 2009, UBS filed the original complaint in this Court against the Fund Counterparties for breach of the Warehouse Agreements that had been entered in connection with the Restructured Transaction. By that time, the Fund Counterparties and SOHC's alter ego, Highland Financial, had been insolvent and unable to pay their creditors for some time. Nonetheless, Highland Capital and Highland Financial [redacted]

19. In sum, after fraudulently inducing UBS to agree to the Restructured Transaction, Highland Capital and its principals exercised their domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties for their own personal gain, i.e., solely and improperly to protect and enhance the value of Highland Capital and its principals by wrongful and improper means. In the process, they made it impossible for the Fund Counterparties to pay UBS the losses they had agreed to pay on the Warehouse Facility.

THE PARTIES

A. The Plaintiffs

20. Plaintiff UBS AG, London Branch, is a banking corporation organized under the laws of Switzerland with its principal place of business at Finsbury Avenue, London, United Kingdom.

21. Plaintiff UBSS is a limited liability company organized under the laws of Delaware with its principal places of business at 677 Washington Blvd., Stamford, Connecticut, and 299 Park Avenue, New York, New York.

B. Highland Capital

22. Highland Capital Management, L.P. ("Highland Capital") is a limited partnership organized under the laws of Delaware, with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240, and an office at 9 West 57th Street, New York, New York. Highland Capital is registered to do business in New York. Highland Capital describes itself as a 100% employee-owned partnership. Highland Capital is an investment adviser that manages a large number of investment entities that operate as hedge funds for Highland Capital's principals and affiliates, as well as unaffiliated investors. Highland Capital currently manages

over $25 billion in various assets, including structured financial products. Highland Capital also holds direct and indirect equity and ownership interests in the entities that it manages, including in Highland Financial, the Fund Counterparties and the Affiliated Transferee Defendants. James D. Dondero is the President of Highland Capital, as well as one of its founders. Concurrently with filing the First Amended Complaint in this Action, UBS commenced a separate action against Highland Capital (the "Highland Capital Action"). The Highland Capital Action was later consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the "Consolidated Action").

C. The Defendants

1. Defendant Strand

23. Defendant Strand Advisors, Inc. ("Strand") is Highland Capital's general partner. Strand is a Delaware corporation principally engaged in the business of serving as the general partner of Highland Capital. As Highland Capital's general partner, Strand is responsible for Highland Capital's liabilities and obligations and regularly conducts business in New York, or causes its affiliates to conduct business in New York.

2. Defendants Highland Financial and SOHC

24. Highland Special Opportunities Holding Company ("SOHC") is a company organized under the laws of the Cayman Islands, with its offices at Walker House, PO Box 908GT, Mary Street, George Town, Grand Cayman, Cayman Islands. SOHC is a wholly-owned subsidiary of defendant Highland Financial Partners, L.P. (a Delaware limited partnership) ("Highland Financial"). SOHC has six sister subsidiaries, all of which are owned in whole or in part by Highland Financial. Highland Capital serves as investment manager to defendant Highland Financial, SOHC and its sister subsidiaries.

25. Highland Financial is SOHC's alter ego. [redacted] For all purposes relevant to this action, Highland Financial and SOHC should be treated as a single entity and as alter egos of one another.

3. Defendant CDO Fund

26. Defendant Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") is a Bermuda exempted limited partnership, with its principal place of business at 52 Reid Street, Hamilton, Bermuda. Highland Capital controls CDO Fund's investment decisions through an investment management agreement. Between January 31, 2007 and August 31, 2008, Highland Capital's and its affiliates' aggregate ownership interest in CDO Fund ranged between 43.36% and 56.44%. Highland CDO Opportunity Fund, L.P. and Highland CDO Opportunity Fund, Ltd. serve as so-called "feeder funds" for defendant CDO Fund.

4. The Affiliated Transferee Defendants [redacted]

27. Defendant Highland Credit Strategies Master Fund, L.P. ("Credit Strategies") is a Bermuda limited partnership organized with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. Credit Strategies transacts business within New York, and derives substantial revenue from interstate and international commerce.

28. Defendant Highland Crusader Offshore Partners, L.P. (the "Crusader Fund") is a Bermuda limited partnership with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The Crusader Fund also has an office located at 13455 Noel Road, Suite 800, Dallas, Texas 75240. The Crusader Fund transacts business within New York, and derives substantial revenue from interstate and international commerce.

29. Defendant Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund") is a Delaware limited partnership with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240.

30. Credit Strategies, the Crusader Fund and the Credit Opp. Fund are referred to herein collectively as the "Affiliated Transferee Defendants" [redacted]

D. Non-Parties Affiliated With Highland Capital In Which The Fund Counterparties Invested

31. The Fund Counterparties held investments in several Highland Capital-affiliated funds, including Highland Credit Opportunities CDO, L.P., Highland Legacy, Highland Loan Funding V, Highland Park CDO I, Ltd., Highlander Euro CDO B.V. and Highlander Euro

CDO III B.V. Highland Capital served as the investment manager for these affiliated funds, and received valuable fees derived from the valuations of these funds' assets, which it managed.

JURISDICTION AND VENUE

32. Venue in this Court is proper under CPLR 503 because plaintiff UBSS has a principal place of business in New York County.

33. Venue is also proper under CPLR 501, and this Court may exercise jurisdiction over the Fund Counterparties because UBS, Highland Capital and the Fund Counterparties all agreed in writing, before this action was commenced, to submit to such jurisdiction and venue, in connection with any dispute that may arise out of, in connection with, or related to, the Agreements (defined below), or any of the matters contemplated thereby. This Court also may exercise jurisdiction over Highland Financial because it is the alter ego of SOHC.

34. This Court also may exercise jurisdiction over all defendants pursuant to CPLR 301 and 302(a)(1) and (3), because defendants regularly transact and solicit business in New York, committed tortious acts causing injury in New York, should reasonably have expected that their tortious acts would have consequences in New York, the effect of their wrongful conduct was felt in New York, and/or derive substantial revenue from interstate or international commerce. Additionally, Highland Capital has an office in New York and is a foreign limited partnership registered to do business in New York.

FACTUAL BACKGROUND

A. The Original Engagement

35. In or around April 2007, Highland Capital approached UBS for short-term financing in connection with a securitization that Highland Capital wanted to sponsor. UBS agreed to do so (the "Original Engagement").

36. On or about April 20, 2007, UBSS and Highland Capital entered into an engagement letter (the "Original Engagement Letter"), which contemplated that UBSS would act as the exclusive financial arranger and placement agent for a type of collateralized debt obligation transaction ("CDO"), known as a collateralized loan obligation ("CLO") squared or "CLO Squared" transaction. (A copy of the Original Engagement Letter is annexed hereto as Exhibit A.)

37. CLOs are a form of securitization where interest and principal payments on corporate loans made to multiple mid-sized and large businesses are pooled together by a lender or the owner of the loans, and then passed on through a securitization structure to investors. CLOs typically involve multi-million dollar loans known as syndicated loans, or leveraged loans made to new businesses or existing businesses, often to acquire other companies. The loan originators are able to spread risk through the CLO securitization, and simultaneously free up capital to make new loans to other businesses. The Original Engagement contemplated the securitization of CLO securities. Thus, the securitization contemplated by Highland Capital would have been a "CLO Squared" transaction.

38. On or about May 22, 2007, as contemplated by the Original Engagement Letter, UBSS and Highland Capital entered into a warehouse agreement (the "Original Cash Warehouse Agreement"). (A copy of the Original Cash Warehouse Agreement is annexed hereto as Exhibit B.) In accordance with the terms of the Original Engagement Letter and the Original Cash Warehouse Agreement, UBSS agreed to acquire securities as directed by Highland Capital. Highland Capital instructed UBS to acquire various CLO securities issued in connection with prior CLO transactions involving other sponsors and issuers (the "Cash Portfolio").

39. In a separate but related synthetic warehouse agreement (the "Original Synthetic Warehouse Agreement," and together with the "Original Cash Warehouse

Agreement," the "Original Warehouse Agreements"), UBS AG agreed to enter into credit default swaps (the "CDS Portfolio," and together with the Cash Portfolio, the "Warehouse Assets"), pursuant to which UBS AG sold credit protection to various third parties. (A copy of the Original Synthetic Warehouse Agreement is annexed hereto as Exhibit C.)

40. For Highland Capital's benefit, UBS held the Warehouse Assets on its balance sheet (the "Warehouse Facility"). UBS was expected to hold the Warehouse Assets until such time as the parties could arrange for the assets to be securitized as part of the contemplated securitization. In particular, if the parties believed that a securitization was economically feasible, they would create a special purpose entity that would acquire the Warehouse Assets from UBS using the proceeds from the sale of securities to investors. The special purpose entity's debt securities would be secured by those Warehouse Assets.

41. Under the Original Warehouse Agreements, if the Original Engagement terminated without a securitization, Highland Capital and the Fund Counterparties were obligated to pay UBS for losses on the Warehouse Assets. In particular, under the terms of the Original Cash Warehouse Agreement, Highland Capital was directly responsible for the first $50 million in losses in the Cash Portfolio, and under the terms of the Original Synthetic Warehouse Agreement, the Fund Counterparties were obligated to pay UBS for any and all losses suffered on the CDS Portfolio.

42. The Original Engagement Letter expired by its terms on August 15, 2007 without a securitization occurring. The Original Warehouse Agreements expired on the same date in accordance with their respective terms.

43. As of August 15, 2007, the Warehouse Assets in the Warehouse Facility had lost in excess of $86 million in value. Although they had sufficient capital to do so,

Highland Capital and the Fund Counterparties failed and refused to pay UBS what it was owed under the Original Warehouse Agreements.

44. As a result of extensive negotiations as well as representations and warranties made by Highland Capital on its own behalf, and on behalf of the Fund Counterparties as their investment manager, UBS agreed to restructure the terms of the Original Engagement.

B. Highland Capital And The Fund Counterparties Resort To Fraud To Avoid Highland Capital's Obligations To UBS

45. As alleged above, as a result of the termination of the Original Engagement, Highland Capital was directly liable to UBS under the Original Warehouse Agreement for in excess of $86 million.

46. Between August 2007 and March 14, 2008, UBS, Highland Capital and the Fund Counterparties had discussions and negotiations concerning a restructuring of the terms of the Original Engagement. Those negotiations resulted in agreements to restructure the Original Engagement (the "Restructured Transaction"), including a release by UBS of its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement. (The terms of the Restructured Transaction are set forth in the Engagement Letter and Warehouse Agreements described below (collectively, the "Agreements"), which are annexed hereto as Exhibits D, E and F, respectively.)

47. During the course of negotiations and before March 14, 2008, Highland Capital and Fund Counterparties made several material misrepresentations to UBS concerning the creditworthiness of the Fund Counterparties. Dondero, Highland Capital and the Fund Counterparties also failed to disclose to UBS information which would have been material to UBS's decision to enter the Restructured Transaction ("Omissions," as defined above). As

Highland Capital and the Fund Counterparties knew, UBS reasonably relied upon those material misrepresentations and, due to the Omissions, a misstated assessment of the Fund Counterparties, all to its detriment in deciding whether to enter the Restructured Transaction. UBS reasonably and justifiably relied on these misrepresentations and Omissions of facts and information that were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS reasonably believed that Highland Capital and the Fund Counterparties would not provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets as it in fact did.

48. For example, on or about December 28, 2007, to induce UBS to enter the Restructured Transaction and related Agreements, Gibran Mahmud of Highland Capital sent SOHC financial statements to UBS. On or about January 29, 2008, UBS requested additional financial information related to SOHC. Later that same day, to induce UBS to enter the Restructured Transaction and related Agreements, Phil Braner of Highland Capital emailed UBS a copy of SOHC's Statement of Financial Condition, dated December 31, 2007.

49. As described with more particularity below, the SOHC financial information that Highland Capital and the Fund Counterparties provided to UBS, which Highland Capital was responsible for preparing, was materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon SOHC's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

50. On or about February 4, 2008, Matt Killebrew of Highland Capital provided UBS with financial reports via email that reflected financial summaries, and aggregate

valuations for CDO Fund's assets as of December 31, 2007. On or about March 4, 2008, Mr. Killebrew sent UBS similar reports for the period ended January 31, 2008. As described with more particularity below, these financial reports, which Highland Capital prepared, also were materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon CDO Fund's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

51. The Fund Counterparties' financial statements [redacted] These facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties.

52. CDO Fund's financial statements [redacted]

[redacted]

53. Similarly, Highland Capital and the Fund Counterparties concealed from UBS the fact that the Fund Counterparties [redacted]

54. In addition, the Fund Counterparties' financial statements that Highland Capital and the Fund Counterparties provided to UBS in advance of the Restructured Transaction contained [redacted]

[redacted]

55. During the course of negotiations concerning the restructuring, UBS also insisted that the Fund Counterparties have the ability to post $70 million in cash and securities as collateral, which would be held at State Street Bank (the "Initial Restructured Transaction Collateral"), and in which UBS would hold a security interest. The Fund Counterparties' ability to do so using their own assets was qualitatively and quantitatively material to UBS. Among other things, it demonstrated the strength of their balance sheets, and by extension, their ability to satisfy future obligations to UBS.

56. Highland Capital and the Fund Counterparties agreed that the Fund Counterparties would post $70 million in Initial Restructuring Collateral. [redacted]

57. [redacted]

58. As the Fund Counterparties' investment manager, Highland Capital maintained the Fund Counterparties' accounting records, and knew Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe, and reasonably did not believe, that Highland Capital would provide it with false, incomplete or otherwise misleading information about

59. If UBS had known that the Fund Counterparties

[redacted] It also would have drawn into question the Fund Counterparties' liquidity. [redacted]

60. But for Dondero's, Highland Capital's and the Fund Counterparties' false and misleading statements and Omissions concerning the Fund Counterparties' finances and assets, and [redacted] UBS would not have entered into the Restructured Transaction or the Agreements that memorialized its terms. Given the Fund Counterparties' weak credit quality, additional adverse information about their collective or individual creditworthiness would have deterred UBS from going forward with the Restructured Transaction and putting more assets at risk. These misrepresentations and Omissions proximately caused harm to UBS.

61. UBS would not have entered into a transaction with parties that made misrepresentations as Highland Capital and the Fund Counterparties did. UBS also would not have agreed to release its valuable claims arising out of the Original Engagement under such circumstances. Because of, and in reliance on, the false and misleading information about the Fund Counterparties provided by Dondero, Highland Capital and the Fund Counterparties, UBS entered into the Restructured Transaction memorialized in the Agreements. Because each of the misrepresentations and Omissions identified above disguised the Fund Counterparties' inability to satisfy their obligations to UBS, the misrepresentations and Omissions proximately caused harm to UBS.

C. The Restructured Transaction Agreements

1. The Engagement Letter

62. On or about March 14, 2008, the parties reached agreement on the terms of a restructured engagement, which were memorialized in a new engagement letter (the "Engagement Letter," annexed hereto as Exhibit D). Pursuant to the Engagement Letter, Highland Capital re-engaged UBSS to act as placement agent in the event that market conditions improved, and the parties could go forward with securitizing the Warehouse Assets already held by UBS in the Warehouse Facility. UBS agreed to continue holding the Warehouse Assets in the Warehouse Facility, which had a notional value of approximately $818 million.

63. Under the terms of the Engagement Letter, UBS released claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

2. The Restructured Warehouse Agreements

64. On March 14, 2008, UBSS, the Fund Counterparties and Highland Capital also entered into a cash warehouse agreement (the "Cash Warehouse Agreement"), pursuant to which UBSS agreed to continue to hold the Cash Portfolio. (A true and correct copy of the Cash Warehouse Agreement is annexed hereto as Exhibit E.)

65. UBS AG, the Fund Counterparties and Highland Capital also entered into a synthetic warehouse agreement, dated as of March 14, 2008 (the "Synthetic Warehouse Agreement," and together with the Cash Warehouse Agreement, the "Warehouse Agreements"), pursuant to which UBS AG agreed to continue warehousing credit protection that it sold, i.e., the CDS Portfolio. (A true and correct copy of the Synthetic Warehouse Agreement is annexed hereto as Exhibit F.)

66. Section 13(B) of the Cash Warehouse Agreement and § 11(B) of the Synthetic Warehouse Agreement make Highland Capital liable for losses, including losses in the

Warehouse Facility, by reason of acts or omissions constituting bad faith, willful misconduct, or gross negligence.

67. Under § 12 of the Synthetic Warehouse Agreement, the Fund Counterparties agreed to transfer to State Street the Initial Restructuring Collateral to partially secure their respective obligations to UBS under the Warehouse Agreements. Annex C to the Synthetic Warehouse Agreement identified the six assets that the Fund Counterparties purportedly transferred to State Street to satisfy their Initial Restructuring Collateral obligations, along with $20 million in cash.

68. The Warehouse Agreements also contained releases whereby UBS agreed to release claims it had against Highland Capital and the Fund Counterparties for losses arising out of the Original Engagement.

D. Highland Capital Uses Its Control Over The Fund Counterparties To Dissipate Their Assets Without Regard For The Fund Counterparties' Growing Obligations To UBS

69. Almost immediately after the Restructured Transaction Agreements were executed, Highland Capital and the Fund Counterparties knowingly began to dissipate the Fund Counterparties' assets and make it impossible for the Fund Counterparties to ever repay UBS what they owed. Highland Capital and the Fund Counterparties did so at various times when the Fund Counterparties owed UBS hundreds of millions of dollars.

70. For example, on or about March 26, 2008, just days after entering the Restructured Transaction, Highland Capital caused certain SOHC assets to be encumbered by entering into a transaction with Barclays Bank, plc. ("Barclays"). At or around the same time, CDO Fund was negotiating financing arrangements with Morgan Stanley & Co. International Ltd. and Highland Capital IV SPC, whereby it granted a security interest in its assets to those entities. By granting a security interest in the Fund Counterparties' assets to other creditors,

Highland Capital unfairly and improperly reduced the assets available to satisfy the Fund Counterparties' obligations to UBS in bad faith and in violation of UBS's rights.

71. Similarly, on or about April 2, 2008, Highland Capital advised UBS that defendant CDO Fund had recently monetized a $129 million long position in SunCom Wireless. When Highland Capital and CDO Fund subsequently provided UBS with additional financial information about CDO Fund, however, UBS discovered that Highland Capital had caused CDO Fund to transfer approximately $100 million of the cash proceeds from the SunCom Wireless sale out of CDO Fund.

72. By improperly removing such a substantial amount of cash from CDO Fund, Highland Capital interfered in bad faith with CDO Fund's ability to satisfy its steadily increasing financial obligations to UBS. In particular, in or around May 2008, when the cash proceeds from the SunCom Wireless position were siphoned off, the Fund Counterparties owed UBS in excess of $166 million related to losses in the Warehouse Facility, approximately 50% of which CDO Fund was obligated to pay.

73. Highland Capital also repeatedly caused SOHC's cash to be transferred by defendant Highland Financial. In particular, during the first five months of 2008, SOHC's cash position was reduced by over $10 million at a time when its obligations to UBS were increasing substantially.

E. In the Fall of 2008, Losses Mount And The Fund Counterparties Face Collateral Calls From Creditors Including UBS That They Cannot Meet Despite Highland Capital's Belated Efforts To Do So [redacted]

74. Under the terms of the Warehouse Agreements, the Fund Counterparties were required to post additional collateral with UBS if the combined market value of (a) the

Warehouse Assets and (b) the Initial Restructured Transaction Collateral, declined below a certain amount.

75. By September 2008, losses in the Warehouse Facility had increased significantly. At the same time, the value of the Initial Restructuring Collateral had declined substantially, as had the value of the assets held by the Fund Counterparties.

76. Highland Capital was desperate to avoid a default by any of its affiliates, including the Fund Counterparties. If a Highland Capital affiliate defaulted on its obligations to a creditor, Highland Capital's reputation in the investment community would be damaged, and there was a risk that Highland Capital's business would collapse. Highland Capital feared that a public default would lead investors in Highland Capital's hedge fund family to withdraw their capital, and lead creditors to take aggressive actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights.

1. The First Margin Call

77. On or about September 16, 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Specifically, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties were each required to post $10 million in cash or equivalent securities (the "First Margin Call").

78. Because Highland Capital had routinely drained cash from the Fund Counterparties, the Fund Counterparties lacked the liquidity to meet UBS's demands using their own assets.

79. On or about September 19, 2008, the Fund Counterparties satisfied the First Margin Call by together posting $20 million in cash as additional collateral. [redacted]

[redacted]

2. UBS Is Harmed By Highland Capital's Response To The Fund Counterparties' Liquidity Crisis

80. In the wake of the First Margin Call, the Fund Counterparties remained starved for liquidity. Still desperate to avoid defaults to creditors and the consequences described above, Highland Capital resorted to [redacted]

81. Highland Capital and the individuals that directed the Fund Counterparties knew that they had caused the Fund Counterparties to become incapable of satisfying their obligations to all of their respective creditors when they came due, and that they were insolvent or, at the very least, within the zone of insolvency.

82. For example, on or about September 26, 2008, Dondero and Highland Capital improperly [redacted]

[redacted]

83. [redacted]

84. [redacted]

85. [redacted]

[redacted]

86. [redacted] Highland Capital executed this plan at UBS's expense to protect their substantial personal stake in Highland Financial and prevent negative publicity associated with defaulting [redacted]. Implementing this plan, however, caused SOHC (and its alter ego, Highland Financial) to improperly and in bad faith breach duties and obligations to UBS.

87. [redacted] SOHC's expected obligations to UBS were well in excess of $250 million, which were due and owing to UBS no later than March 14, 2009. Thus, by [redacted], Highland Capital and the Fund Counterparties made a fraudulent conveyance and interfered in bad faith with the Fund Counterparties' ability to meet their contractual obligations to UBS.

88. Given the state of the financial markets at the time, Highland Capital, Highland Financial and SOHC had no expectation that SOHC would be able to satisfy its

obligations to UBS when they came due. [redacted]

89. [redacted]

3. The Second Margin Call

90. On or about October 21, 2008, UBS notified Highland Capital that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties each owed another $10 million (the "Second Margin Call").

91. In response to the Second Margin Call, Highland Capital offered UBS numerous assets as collateral. UBS rejected those offers for various business-related reasons. As UBS would later learn, however, at the time Highland Capital was offering the assets to UBS, the Fund Counterparties did not own them.

92. On or about October 24, 2008, the Fund Counterparties satisfied the Second Margin Call by together posting assets with a notional value of $49.97 million (but a market value of approximately $20 million), with the understanding that UBS would authorize State Street to return the securities if and when the Fund Counterparties were able to replace

those securities with $20 million in cash. As UBS would later learn, [redacted]

93. Moreover, at the same time that Highland Capital was telling UBS that the Fund Counterparties did not have sufficient cash assets to meet the Second Margin call, [redacted]

4. The Third Margin Call

94. On or about November 7, 2008, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties had an obligation to post another $10 million as collateral (the "Third Margin Call").

95. On or about November 11, 2008, Highland Capital and the Fund Counterparties offered to post various securities to satisfy the Third Margin Call. In response to the Third Margin Call, Phil Braner of Highland Capital emailed UBS a list of proposed collateral including eight securities with a purported market value of approximately $20 million (i.e., twice the amount of cash due to satisfy the Third Margin Call).

96. Pursuant to the Warehouse Agreements, UBS was authorized to reject proposed collateral. UBS determined that the proposed additional collateral offered by Highland Capital and the Fund Counterparties was unacceptable. On or after November 13, 2008, UBS formally rejected the offered securities, and requested that the Fund Counterparties provide cash

or cash equivalent collateral to satisfy their obligations under § 12(C) of the Synthetic Warehouse Agreement.

97. UBS would later learn that [redacted]

98. When UBS confronted Highland Capital about this issue Mr. Braner of Highland Capital explained that [redacted]

F. Termination Of The Agreements And Demand For Payment Of Losses

99. As of December 3, 2008, the Fund Counterparties still had not met the Third Margin Call in accordance with § 12(C) of the Synthetic Warehouse Agreement. This failure resulted in UBS's declaration of a termination date ("Termination Date") under the Agreements.

100. On December 3, 2008, UBS delivered a letter (the "Termination Date Letter") to Highland Capital and the Fund Counterparties notifying them of such failure and the

occurrence of a Termination Date under each Agreement. (A true and correct copy of the Termination Date Letter is annexed hereto as Exhibit G.)

101. Sections 5 and 7 of the Cash Warehouse Agreement provided that if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, UBSS could, in its sole discretion, retain any of the securities in the Warehouse Facility or sell such securities to one of UBSS's affiliates or an unaffiliated party.

102. Pursuant to the terms of the Agreements, if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, each of the Fund Counterparties was obligated to pay to UBS its pro rata share of any market value losses on the Warehouse Assets, which UBS determined it had experienced and so notified Highland Capital and the Fund Counterparties.

103. On December 19, 2008, UBSS delivered a letter (the "Cash Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Cash Warehouse Demand Letter is annexed hereto as Exhibit H.) UBSS demanded that Highland Capital and the Fund Counterparties wire that required amount to UBSS no later than 5:00 pm on December 24, 2008 (i.e., the third business day after the date of the Cash Warehouse Demand Letter) (the "Final Payment Date"). Highland Capital and the Fund Counterparties failed to make the required payment to UBSS.

104. The Synthetic Warehouse Agreement provided that in the event the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, the Fund Counterparties would be collectively responsible for 100% of the aggregate amount of losses on the CDS Portfolio and each of the Fund Counterparties would pay, after notice of such amount due from UBS, its pro rata share of such amount to UBS within three business days.

105. On December 19, 2008, UBS AG delivered a letter (the "Synthetic Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Synthetic Warehouse Demand Letter is annexed hereto as Exhibit I.) UBS AG demanded that the Highland Capital and the Fund Counterparties wire the required amount to UBS AG no later than 5:00 PM on the Final Payment Date (i.e., December 24, 2008 — the third business day after the date of the Synthetic Warehouse Demand Letter). Highland Capital and the Fund Counterparties failed to make the required payment to UBS AG.

G. Notice Of Failure to Pay, Auction And Final Accounting Letter

106. On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to make the requisite payments when due pursuant to the Agreements and the applicable demand letters. On or about January 16, 2009, in connection with unwinding the Warehouse Facility, UBS conducted the auction contemplated by the Warehouse Agreements.

107. On or about March 19, 2009, UBS delivered a letter to Highland Capital and the Fund Counterparties concerning a final accounting concerning the auction and the losses in the Warehouse Facility. UBS determined that Highland Capital and the Fund Counterparties owed it $686,853,290.26.

H. Highland Capital [redacted]

108. [redacted]

109. In December 2008, immediately after UBS terminated the Restructured Transaction, Dondero and Highland Capital [redacted]

110. On or about February 24, 2009, UBS commenced this action against Highland Capital and the Fund Counterparties. At the time, SOHC and Highland Financial, as its alter ego, owed UBS approximately $345 million.

111. Undeterred, on or about March 17, 2009, Dondero and Highland Capital [redacted]

- [redacted]

- [redacted]
- [redacted]

112. As a result, Highland Capital (a) further interfered in bad faith with UBS's contractual rights and the Fund Counterparties' contractual obligations under the Warehouse Agreements, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements; and (b) [redacted]

113. [redacted] The full extent of UBS's injury should be determined at trial.

114. [redacted]

[redacted]

FIRST CAUSE OF ACTION
(Fraud Against The Fund Counterparties)

115. UBS repeats and realleges the allegations set forth in paragraphs 1 through 114 of this Second Amended Complaint as if fully set forth herein.

116. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

117. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

118. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties as well as information about their finances and assets, including, but not limited to, information regarding the following:

(a) [redacted]

(b) [redacted]

(c) [redacted]

119. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

120. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances and assets when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

121. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

122. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances and assets. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Fund Counterparties to complete or clarify the information that it provided to UBS concerning

the Fund Counterparties' finances and assets. Consequently, Highland Capital's and the Fund Counterparties' concealment of the Fund Counterparties' finances and assets was fraudulent.

123. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition and assets. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances and assets. UBS also had no reason to believe that the financial information that Highland Capital provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008, [redacted]

124. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

125. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

126. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of $686 million in losses that the Fund Counterparties cannot pay to UBS.

127. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Fraud Against The Fund Counterparties)
(Pled Solely To Preserve For Appeal)

128. UBS repeats and realleges the allegations set forth in paragraphs 1 through 127 of this Second Amended Complaint as if fully set forth herein.

129. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

130. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

131. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties and information about their finances, assets and business practices, including, but not limited to, information regarding the following:

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

(e) [redacted]

(f) [redacted]

(g) [redacted]

132. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

133. These Omissions rendered the Fund Counterparties' representations, statements and financial statements materially misleading. Because Highland Capital and the Fund Counterparties concealed this information from UBS, UBS could not properly evaluate SOHC's ability to satisfy its obligations to UBS. For instance, UBS received financial reports from Highland Capital for the Fund Counterparties that suggested that the Fund Counterparties held hundreds of millions of dollars worth of assets that could be used to satisfy their obligations to UBS. However, a substantial portion of the assets that UBS reasonably believed would be available, were, in fact, not going to be available to pay UBS because they were going to be encumbered as a result of other transactions. In other words, because Highland Capital concealed its intentions, the financial reports that it provided to UBS were misleading as they provided UBS with false and illusory comfort regarding the Fund Counterparties' capacity to fulfill their contractual obligations to UBS. As the Fund Counterparties' investment manager, Highland Capital would have led the negotiations related to the other financing arrangements.

134. Similarly, during negotiations concerning the Initial Restructuring Collateral, Highland Capital and SOHC made an additional Omission by not disclosing to UBS

the fact that SOHC had a serious liquidity problem. SOHC had to borrow cash from Highland Capital to satisfy the cash portion of its Initial Restructuring Collateral obligation. On or about December 18, 2007, while the parties were negotiating the restructuring, Highland Capital loaned $30 million to SOHC, which Highland Capital and SOHC's alter ego, Highland Financial, earmarked for SOHC to use as collateral in connection with negotiating extensions of warehouse facilities, including the one with UBS. As Highland Financial's and SOHC's investment manager, Highland Capital knew about SOHC's liquidity problems since they were discussed openly at Highland Financial board meetings attended by Highland Capital. The failure to fully disclose SOHC's liquidity problem, and its inability to meet the Initial Restructuring Collateral obligation using its own cash assets was an Omission, because it was indicative of the strength of SOHC's finances and assets, and SOHC's ability to satisfy obligations to UBS.

135. Highland Capital and Fund Counterparties also concealed from UBS that Highland Capital had to commingle assets among its various affiliates and disregard corporate formalities to satisfy the Fund Counterparties' liquidity needs. Facts and information concerning these business practices, including Highland Capital's commingling of assets and disregard of corporate formalities was information solely and peculiarly within the knowledge of Highland Capital and its affiliates. As the investment manager to Highland Financial, SOHC and CDO Fund (as well as the Affiliated Transferee Defendants), Highland Capital knowingly arranged and caused the asset transfers between and among the various affiliates in disregard of corporate formalities.

136. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and

qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances, assets and business practices when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

137. In addition, if UBS had known that Highland Capital and the Fund Counterparties ignored corporate formalities or that Highland Capital freely transferred assets among its controlled entities, UBS would not have entered the Restructured Transaction. These misrepresentations and Omissions proximately caused harm to UBS.

138. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital and the Fund Counterparties provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

139. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances, assets and business practices. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Highland Entities to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances, assets and business practices. Consequently, Highland Capital's and the Fund Counterparties' concealment about the Fund Counterparties' finances, assets and business practices was fraudulent.

140. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund

Counterparties' financial condition, assets and business practices. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances, assets and business practices. UBS also had no reason to believe that the financial information that Highland Capital and the Fund Counterparties provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008, [redacted]

141. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

142. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole

for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

143. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of $686 million in losses that the Fund Counterparties cannot pay to UBS.

144. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of Contract Under the Cash Warehouse Agreement Against The Fund Counterparties)

145. Plaintiff UBSS repeats and realleges the allegations set forth in paragraphs 1 through 144 of this Second Amended Complaint as if fully set forth herein.

146. The Cash Warehouse Agreement is a valid and binding contract.

147. UBSS has performed all of its obligations under the Cash Warehouse Agreement.

148. Pursuant to the Cash Warehouse Agreement, each of the Fund Counterparties was required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the required transfer. The Fund Counterparties' failure to make such transfer is a breach under the Cash Warehouse Agreement, and resulted in a Termination Date under the Cash Warehouse Agreement.

149. In accordance with the terms of the Cash Warehouse Agreement, UBSS demanded that each of the Fund Counterparties pay to UBS their respective pro rata shares of the amount of losses on the Cash Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Cash Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBSS. The failure to pay these amounts to UBSS when due under the Cash Warehouse Agreement constituted a further breach under the Cash Warehouse Agreement.

150. By reason of the foregoing, UBSS has suffered and will continue to suffer damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Breach of Contract Under the Synthetic Warehouse Agreement Against The Fund Counterparties)

151. Plaintiff UBS AG, repeats and realleges the allegations set forth in paragraphs 1 through 150 of this Second Amended Complaint as if fully set forth herein.

152. The Synthetic Warehouse Agreement is a valid and binding contract.

153. UBS AG has performed all of its obligations under the Synthetic Warehouse Agreement.

154. Pursuant to the Synthetic Warehouse Agreement, each of the Fund Counterparties were required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the requisite transfer. The failure to make such transfer resulted in a breach and a Termination Date under the Synthetic Warehouse Agreement.

155. UBS AG demanded that each of the Fund Counterparties pay to UBS AG their pro rata share of losses on the CDS Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Synthetic Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBS. The failure to pay these amounts when due under the Agreements was a further breach under the Synthetic Warehouse Agreement.

156. By reason of the foregoing, UBS AG has suffered and will continue to suffer damages in an amount to be determined at trial.

157. Paragraphs 157 to 166 have been intentionally left blank.

FIFTH CAUSE OF ACTION
(Fraudulent Conveyances Against All Defendants)

167. UBS repeats and realleges the allegations set forth in paragraphs 1 through 166 of this Second Amended Complaint as if fully set forth herein.

168. Between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties and caused the Fund Counterparties to transfer valuable cash and assets out of the Fund Counterparties, thereby impairing their ability to bear losses in the Warehouse Facility, and otherwise satisfy their obligations to creditors, including UBS. [redacted]

169. [redacted]

170. [redacted]

171. [redacted]

172. [redacted]

173. [redacted]

[redacted]

174. [redacted]

175. [redacted]

176. [redacted]

177. [redacted]

178. [redacted]

179. As a result of the foregoing fraudulent conveyances, the Fund Counterparties were unable to satisfy their obligations to UBS. As a result of the foregoing fraudulent conveyances, UBS has been harmed in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Tortious Interference With Contractual Relations Against The Affiliated Transferee Defendants)
(Pled Solely To Preserve For Appeal)

180. UBS repeats and realleges the allegations set forth in paragraphs 1 through 179 of this Second Amended Complaint as if fully set forth herein.

181. The Agreements are valid and binding contracts.

182. The parties agreed that UBS would not bear the risk of any losses in connection with the Restructured Transaction. As a direct result of the Fund Counterparties' breach of the Warehouse Agreements, UBS suffered no less than $686,853,290.26 in damages. Under the terms of the Warehouse Agreements, the Fund Counterparties' obligation to pay UBS for losses in the Warehouse Facility expressly survived the termination of the Agreements.

183. Highland Capital knew of the Agreements, and were familiar with their terms, including the Fund Counterparties' obligations to UBS thereunder. The Affiliated

Transferee Defendants, also knew of the Agreements, and their terms, including the Fund Counterparties' obligations to UBS thereunder.

184. Highland Capital and the Affiliated Transferee Defendants intentionally and improperly caused and ensured a breach of the Warehouse Agreements by the Fund Counterparties, thereby tortiously interfering with UBS's rights under the Agreements.

185. Specifically, in 2008 and 2009 Highland Capital wrongfully caused the improper and fraudulent asset transfers, payments, distributions and dividends described above, and thereby tortiously interfered with UBS's contractual relationship with the Fund Counterparties by knowingly impairing UBS's contractual right under the Warehouse Agreements to be reimbursed by the Fund Counterparties for the losses on the Warehouse Assets. For example, Highland Capital wrongfully caused the March 2009 Fraudulent Conveyance for which there was no legitimate purpose. The Affiliated Transferee Defendants [redacted]

186. Highland Capital and the Affiliated Transferee Defendants [redacted]

187. Highland Capital and the Affiliated Transferee Defendants engaged in the foregoing unlawful and improper conduct, and tortiously interfered with UBS's contractual rights under the Warehouse Agreements, for their own improper personal gain by knowingly violating UBS's rights and making it impossible for the Fund Counterparties to perform under the Warehouse Agreements. In particular, the foregoing conduct constitutes independent torts

and predatory acts directed at UBS for Highland Capital's and the Affiliated Transferee Defendants' own personal gain.

188. As a direct and proximate result of Highland Capital's and the Affiliated Transferee Defendants' tortious interference with UBS's contractual rights under the Agreements, UBS has suffered damages in an amount to be determined at trial. Had Highland Capital and the Affiliated Transferee Defendants not tortiously interfered with UBS's contractual rights, the Fund Counterparties would have been able to make payments to UBS of the amount they owed to UBS under the Warehouse Agreements.

SEVENTH CAUSE OF ACTION
(Declaratory Judgment For General Partner Liability Against Strand)

189. UBS repeats and realleges the allegations set forth in paragraphs 1 through 188 of this Second Amended Complaint as if fully set forth herein.

190. A limited partnership's general partner is personally liable for the partnership obligations of the limited partnership.

191. Highland Capital is a Delaware limited partnership. Defendant Strand is Highland Capital's general partner. As such, Strand is personally liable for the liability, debts and obligations of Highland Capital, including but not limited to Highland Capital's liabilities to UBS arising out of the Consolidated Action.

192. A justiciable controversy exists as to whether Strand is liable to UBS for the injuries caused by Highland Capital complained of in the Consolidated Action as a result of Strand being Highland Capital's general partner.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment For Alter Ego Liability Against Highland Financial)

193. UBS repeats and realleges the allegations set forth in paragraphs 1 through 192 of this Second Amended Complaint as if fully set forth herein.

194. As alleged above, SOHC breached the Warehouse Agreements and otherwise harmed UBS by engaging in fraudulent misconduct. Highland Financial is SOHC's alter ego and should be held responsible and liable for SOHC's breach of the Warehouse Agreements and fraudulent misconduct.

195. SOHC is a mere instrumentality of Highland Financial. SOHC had no independence and could not exercise any business discretion whatsoever. [redacted] SOHC did not have its own offices, officers or employees. Rather, it shared common officers, directors and employees, as well as common office space, with Highland Financial.

196. As alleged in detail above, Highland Financial completely dominated the day-to-day operations of SOHC as well as SOHC's sister-affiliates. In particular, Highland Financial operated Highland Financial and its subsidiaries, including SOHC, as a single entity, [redacted]

[redacted]

197. A justiciable controversy exists as to whether Highland Financial is liable to UBS as SOHC's alter ego for the losses and harm that UBS suffered that were caused by SOHC's breach of the Warehouse Agreements, and the fraudulent and tortious conduct complained of herein.

RELIEF DEMANDED

WHEREFORE, plaintiffs UBSS and UBS AG demand judgment:

(a) On the first cause of action, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than $686,853,290.26;

(b) On the second cause of action, which is pled solely to preserve UBS's appellate rights, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than $686,853,290.26;

(c) On the third cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Cash Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(d) On the fourth cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Synthetic Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(e) On the fifth cause of action, as against all defendants, (i) declaring that the dispositions of the Fund Counterparties' and Highland Financial's assets, as directed by Highland Capital, constituted fraudulent conveyances; (ii) appointing a receiver over defendants; (iii) directing that a full accounting be had of defendants' affairs and finances; (iv) imposing a constructive trust over defendants' assets until such an accounting is completed; and/or (v) awarding UBS damages in an amount to be determined at trial, but no less than the value of the assets fraudulently and improperly transferred, or, alternatively, directing that defendants and their partners, members or shareholders return to the Fund Counterparties any assets or consideration received from Highland Financial or the Fund Counterparties, directly or indirectly, as distributions, dividends, consideration, compensation, fees, interest, principal or otherwise, between March 14, 2008 and the present.

(f) On the sixth cause of action, as against the Affiliated Transferee Defendants, which is pled solely to preserve UBS's appellate rights, declaring that each of those defendants is liable for tortiously interfering with UBS's contractual rights under the Warehouse Agreements, and awarding UBS an amount to be determined at trial;

(g) On the seventh cause of action, as against defendant Strand, declaring that Strand is responsible for Highland Capital's liability and obligations arising out of the Consolidated Action;

(h) On the eighth cause of action, as against defendant Highland Financial, declaring that Highland Financial is SOHC's alter ego, and that as such, Highland Financial is responsible for SOHC's liability and obligations to UBS arising out of this action;

(i) Awarding UBS punitive damages in an amount to be determined at trial;

(j) Granting UBS its costs and disbursements, including reasonable attorneys' fees and expenses of this action;

(k) Granting UBS pre-judgment interest; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 11, 2011

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ *Gregory A. Markel*
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Exhibit B

Phase I Decision and Order

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

----------X

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS, INC.,

Defendant.

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INDEX NO. 650097/2009

DECISION AND ORDER AFTER TRIAL

This action arises out of a failed restructured transaction between plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, UBS) and defendants Highland CDO Opportunity Master Fund, L.P. (CDO Fund) and Highland Special Opportunities Holding Company (SOHC) (together, the Fund Counterparties), and defendant Highland Capital Management, L.P. (Highland Capital) (together with the Fund Counterparties, Highland), for the securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs).

The court conducted a bench trial from July 9 through July 27, 2018 on plaintiffs' third and fourth causes of action in the second amended complaint for breach of contract, and on defendant Highland Capital's first and second counterclaims against plaintiff UBS Securities

LLC for breach of contract and unjust enrichment, respectively.[1] Based on the credible evidence at trial, the court now makes the following determination as to the breach of contract causes of action and counterclaims.[2]

In April and May 2007, the parties agreed to pursue a collateralized debt obligations transaction governed by an Engagement Letter, a Synthetic Warehouse Agreement for CDSs, and a Warehouse Agreement for CLOs (Original Agreements). (DX 4, DX 5, DX 6.)[3] It is undisputed that UBS acted as the "financial arranger" for the transaction and was responsible for financing the acquisition of assets, which would then be held in portfolios, which the parties refer to as the Cash Warehouse and the Synthetic Warehouse or collectively as the Knox Warehouse. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 5.)[4] Highland Capital acted as the "Servicer" and was responsible for identifying the specific CLOs to be securitized and the Reference Obligations for the CDSs to be securitized. (Ps.'s Findings, ¶¶ 3, 4; Ds.'s Findings, ¶¶ 6, 8.)

In furtherance of the transaction, UBS acquired assets with a notional value of $818 million. (Ps.'s Findings, ¶ 6; Ds.'s Findings, ¶ 5.) There were 33 CLO tranches in the Cash Warehouse, with a notional value of $174 million. UBS paid $170 or $170.5 million to acquire the CLOs because the bonds were purchased at a slight discount on their par value. (Ds.' Findings, ¶ 6; Ps.'s Findings, ¶ 6.) The Synthetic Warehouse contained 87 credit default swaps,

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[1] By decision on the record on May 1, 2018 (NYSCEF Doc. No. 494), the court bifurcated the trial. The decision held that the breach of contract claims, which were to be heard by the court, would be determined prior to claims, including fraudulent conveyance claims, which were to be heard by a jury.

[2] At the trial, the parties agreed to the submission of extensive evidence, subject to standing objections. This decision is not based on such evidence, unless the decision expressly states otherwise.

[3] Defendants' and plaintiffs' trial exhibits will be referred to as DX _ and PX _, respectively. The parties' demonstrative exhibits will be referred to as DX Demo. _ and PX Demo. _

[4] The Fund Counterparties' and Highland Capital Management, L.P.'s Proposed Findings of Fact and Conclusions of Law will be referred to as Ds.'s Findings. Plaintiffs' Proposed Findings of Fact and Conclusions of Law will be referred to as Ps.'s Findings. Defendants' Findings are all identified by paragraph number. Plaintiffs' Findings of Fact are identified by paragraph number, while their Findings of Law are identified only by page number.

with a notional value of $644 million. (Ds.'s Findings, ¶ 7; Ps.'s Findings, ¶ 6.). UBS served as the protection seller on all of the CDSs. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 8.) For five of the CDSs, with a notional value of $45 million, Lehman Brothers Special Financing, Inc. (Lehman) acted as the protection buyer (Lehman Swaps). (Ps.'s Findings, ¶ 8; Ds.'s Findings, ¶ 9; PX 755[5], at 1.) For 20 of the CDSs, with a notional value of $124 million, UBS acted as both protection seller and protection buyer (the Internal Swaps). (Ds.'s Findings, ¶ 10; Ps.'s Findings, ¶ 9; PX 755, at 4-5.)

The Original Agreements expired by their terms on August 15, 2007. (PX 1, at 1.) The parties agreed to restructure the transaction, signing a new Engagement Letter, the 2008 Cash Warehouse Agreement (CWA), and the 2008 Synthetic Warehouse Agreement (SWA), as of March 14, 2008. (See PX 1, PX 2, PX 3.) As of March 14, 2008, the Knox assets had lost significant value and the parties agreed that, given the market conditions existing as of the date of the restructured transaction, it was not then feasible to sell the securities and close the transaction. (Ps.'s Findings, ¶ 20; 2008 Engagement Letter [PX 1, at 8].)

As discussed further below, the Synthetic Warehouse Agreement provided for the roll-over of the Existing Credit Default Swaps and the Existing Collateral Portfolio into the warehouses created under the 2008 restructured transaction. (See SWA, Whereas Clause 5.) Section 12 of the Synthetic Warehouse Agreement provided that the Fund Counterparties would transfer additional cash and securities "to secure its obligations to UBS" under the SWA and the CWA. In particular, this Section required the Fund Counterparties to make an Initial Deposit of $20 million in cash and approximately $54 million in Eligible Securities on the date of the

[5] PX 755 is a document that that was jointly prepared by plaintiffs' and defendants' counsel so that specific information regarding the Knox Warehouse assets could be found in one place. (Trial Tr. at 858.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

execution of the SWA. (Id., § 12 [A].) The SWA contained a collateral call provision under which UBS was required to track its CDS and Cash Exposure to losses, as defined under the Agreement, on a semi-monthly basis, and the Fund Counterparties were required to deposit an additional $10 million in collateral (cash and/or Eligible Securities) for every $100 million increase in the defined Deposit Threshold Exposure Amount. (Id., §§ 12 [B], [C].)

It is undisputed that, pursuant to Section 12 (C) of the SWA, UBS made a first collateral call for $10 million on September 17, 2008 (PX 4), and a second collateral call for $10 million on October 21, 2008 (PX 5), both of which were satisfied by the Fund Counterparties. (Testimony of Keith Grimaldi, Former Head of UBS's CDO Secondary Trading Desk, Trial Transcript (Tr.) at 81, 112, 119.)

On November 7, 2008, UBS issued the third, and final, collateral call to the Fund Counterparties for an additional $10 million. (PX 6.) It is undisputed that the Fund Counterparties did not meet this collateral call. (Ds.'s Findings, ¶ 17; Ps.'s Findings, ¶¶ 43-47).[6]

On December 3, 2008, UBS sent a notice to Highland stating that, to date, no deposits have been made in response to the November collateral call, and that "a Termination Date has occurred under the Warehouse Agreements and a termination date has occurred under the Engagement Letter." (PX 7; PX 9.) The notice further stated that "UBS is forbearing from exercising its remedies [under the Agreements] for a period of two Business Days from the date hereof in order to permit [the Fund Counterparties] to pay the Additional Deposits by 5 pm New York time on December 5, 2008." (Id.) On December 5, 2008, UBS sent an additional notice to

[6] It is undisputed that the Fund Counterparties offered to post CLO assets to satisfy the third collateral call and that UBS did not accept that collateral. UBS's Keith Grimaldi testified that UBS rejected the CLOs because "at that time the marketplace was declining and declining rapidly. We thought there would be more declines, so we collectively made a decision that we wanted cash or government securities ... that would be easily liquid and reflect better value." (Trial Tr. at 122.) Defendants stipulated that UBS had the right to insist on cash. (See Statement of Andrew Cruciani [Ds.'s Atty.], Trial Tr. at 1736.)

Highland stating that the Additional Deposit has not been made, and that "[c]onsequently, UBS will proceed to exercise the rights and remedies available to it under the Warehouse Agreements, the Engagement Letter, at law and otherwise." (PX 8.)

THIRD COLLATERAL CALL

As a threshold matter, the parties dispute whether the third collateral call was proper. Highland argues that UBS should not have included the 20 Internal Swaps in calculating the Deposit Threshold Exposure Amount "because the Intradesk [i.e., Internal] Swaps were not Existing Credit Default Swaps under the SWA . . . ." (Ds.'s Findings, ¶ 28.) Highland also claims that the Lehman Swaps were not properly included in the calculation because they had been terminated prior to the third collateral call. (See id., ¶ 27.)

More particularly, Highland claims that the Internal Swaps were not Existing Credit Default Swaps because they were not documented, as allegedly required by Section 3 of the SWA, in the form of an ISDA Master Agreement and ISDA Confirmation. (Ds.'s Findings, ¶¶ 28, 30-31.) UBS does not dispute that the Internal Swaps were not documented by the ISDA Master Agreement and Confirmation, but argues that Section 3 does not require such documentation for the Internal Swaps. (Ps.'s Findings, at 24-25.)[7]

Resolution of this dispute involves an issue of contract interpretation. It is well settled that the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace v 600 Partners Co., 86 NY2d 543, 548 [1995]; W.W.W. Assocs., Inc. v Giancontieri, 77 NY2d 157, 162 [1990].) Written agreements are to be construed in accordance with the parties' intent, and "the best evidence of what parties to a written agreement

[7] It is undisputed that the Internal Swaps were documented by electronic trading tickets but not by ISDA Master Agreements or ISDA trade confirmations. (Ds.'s Findings,¶ 10; Ps.'s Findings,¶¶ 16-17; PX 29 [electronic trading tickets].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

intend is what they say in their writing." (Schron v Troutman Sanders LLP, 20 NY3d 430, 436 [2013] [internal quotation marks, brackets, and citation omitted].) The court should determine from contractual language, without regard to extrinsic evidence, whether there is any ambiguity. (Chimart Assocs. v Paul, 66 NY2d 570, 573 [1986].) Extrinsic or parol evidence "may not be considered when the intent of the parties can be gleaned from the face of the instrument." (Id. at 572-573.) "Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous. . . ." (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002].) "Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties' intent, or where its terms are subject to more than one reasonable interpretation." (Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 25 NY3d 675, 680 [2015] [internal quotation marks and citation omitted].)

It is also well settled that a court should "construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose." (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; National Conversion Corp. v Cedar Bldg. Corp., 23 NY2d 621, 625 [1969] [holding that "[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency"].)

Applying these precepts, the court holds that the SWA is not ambiguous with respect to the requirements for documentation of CDSs, that Section 3 of the SWA only applies to CDSs in which a third party is the protection buyer, and that this Section does not require ISDA documentation for the Internal Swaps.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

The SWA defines "Existing Credit Default Swap[s]" as the CDSs "that were the subject of the Original Synthetic Warehouse Agreement." (SWA, Whereas Clause 5.) Section 3 of the SWA provides, in pertinent part:

> "Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation. . . . Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached [to the SWA] . . . ."

As the Agreement that governs the securitization of Existing and Additional Credit Default Swaps, the SWA contains numerous detailed provisions regarding the accumulation and disposition of these financial instruments. Section 3, which pertains to documentation of the swaps, is the only provision in the SWA that is limited to CDSs in which UBS is the Seller and a counterparty is the Buyer. All of the other provisions of the SWA refer to CDSs without such limitation.

Moreover, like SWA Section 3, the Original SWA provided: "Each Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the counterparty, which documents are confidential between UBS and each counterparty and (ii) the Confirmation attached hereto. . . ." (Original SWA, § 3 [NYSCEF Doc. No. 626].) It is undisputed, however, that the Internal Swaps were included in the Original SWA portfolio but were not documented by the ISDA Master Agreement or Confirmation. It is also undisputed that the Internal Swaps were nevertheless again included in the Initial Net Exposure Amount in the SWA for the restructured transaction. (Testimony of Peter Vinella [Highland's expert in

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

structured financial products], Trial Tr. at 1097, 1124-1125 [acknowledging that the Internal Swaps were included in the Initial Net Exposure Amount].)

Initial Net Exposure Amount is defined in the SWA[8] as "111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof [i.e., the March 14, 2008 "as of" date of the SWA] exceeds the Initial Deposit." As defined in SWA Section 12 (A), the Initial Deposit is the deposit of approximately $74,000,000 in cash and Eligible Securities made on the date of execution of the SWA. Aggregate Net Exposure Amount is defined as the amount by which CDS Exposure and Cash Exposure, as of the date of the collateral calculation, exceed the balance on deposit in the Deposit Account plus Positive Carry with respect to each Collateral Obligation.[9] As discussed above, Section 12 (C) of the SWA requires a deposit of $10 million in additional collateral when the Deposit Threshold Exposure Amount is greater than or equal to $100 million. The Deposit Threshold Exposure Amount is defined in the SWA as "the amount, if any, by which (i) the Aggregate Net Exposure Amount as of [the date of the collateral calculation] exceeds (ii) the Initial Net Exposure Amount." The Initial Net Exposure Amount, which includes the Internal Swaps, is thus integral to the calculation of the Deposit Threshold Exposure Amount.

Based on this reading of the SWA as a whole, the court concludes that the Internal Swaps were Existing Credit Default Swaps within the meaning of the SWA. The lack of ISDA documentation was therefore not a bar to their inclusion in the collateral call calculation.

The court rejects Highland's further contention that the Internal Swaps should not have been included because there was "no economic consequence" to UBS from these swaps. (Ds.'s

[8] Definitions are found in the Definitions section of the SWA (SWA, Ex. A), unless the term is defined in a particular provision of the SWA, in which case the provision will be cited.
[9] Positive Carry is defined in the CWA. As explained by Adam Warren, Highland's damages expert, carry includes interest payments from the CLOs. (Warren Testimony, Trial Tr. at 1299.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Findings, ¶ 33.) The complex formula set forth in Section 12 for calculating the exposure of UBS on the assets in the warehouse that would trigger a collateral call does not contain any requirement that UBS include in the calculation only assets for which it was at risk of sustaining actual losses.[10]

The court further holds that, although the Internal Swaps were properly included in the third collateral call calculation, the Lehman Swaps were not. The parties do not dispute that the Lehman Swaps had been terminated based on the Event of Default that occurred upon Lehman's filing for bankruptcy on September 15, 2008. (DX 87 [UBS Default Notice].) Highland asserts, and UBS does not persuasively counter, that the Lehman Swaps should not have been included in the third collateral call. Indeed, UBS's Grimaldi forthrightly acknowledged that, given the termination, there should not have been "markdowns" on the Lehman Swaps. (Grimaldi Testimony, Trial Tr. at 297-298.).

Highland contends, based on the inclusion of the Lehman Swaps and Internal Swaps in the third collateral call calculation, that UBS "committed a prior material breach by failing to

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[10] In view of this holding that the Internal Swaps were properly included in the collateral call calculation pursuant to the unambiguous terms of the SWA, the court has not considered parol evidence on the issue.

The court thus rejects Highland's request for a finding that UBS admitted that the SWA required ISDA documentation of the Internal Swaps. (See Ds.'s Findings, ¶¶ 30-31.) This request is based on testimony of UBS's Keith Grimaldi who, when shown Section 3 during cross-examination and asked if every CDS was required to have ISDA documentation, responded: "According to the language, yes." (Grimaldi Testimony, Trial Tr. at 262-264.) Even if this evidence were properly considered, Highland's reliance on this answer ignores that Mr. Grimaldi further testified that ISDA documentation would not be "filled out" until the assets were transferred in the securitization. (Id. at 267-270.)

The court further notes that Highland requests a finding, arguably in support of its claim that the CDSs were not Existing Credit Default Swaps, that a CDS "cannot be created with the same legal entity on both sides of the transaction. . . ." (Ds.'s Findings, ¶ 29.) Even if parol evidence were properly considered, there was substantial evidence in the record that internal swaps were common in securitizations of synthetic assets. (LeRoux Testimony, Trial Tr. at 1673-1676; (Vinella Testimony, Trial Tr. at 1158-1162 [denying that intracompany swaps are "economic transactions" but acknowledging their use in CLO securitizations].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

properly calculate the collateral call[]." (Ds.'s Findings, ¶¶ 23, 27-28.) In support of this contention, Highland relies on the testimony of its expert Peter Vinella. According to Mr. Vinella's own analysis, however, if the Lehman swaps are excluded from the calculation for the third collateral call, but the Internal Swaps are included, the total increase in the Deposit Threshold Exposure Amount as of November 4, 2008 is $328.62 million—an amount greater than the $300 million required to authorize the third collateral call pursuant to Section 12 of the SWA. (Vinella Testimony, Trial Tr. at 1122-1139; DX Demo. 8.) Louis Dudney, UBS's expert in forensic accounting and damages (Trial Tr. at 824), analyzed Mr. Vinella's testimony and confirmed, using the same numbers as Mr. Vinella, that the Deposit Threshold Exposure Amount still exceeded $300 million on November 4, 2008, after excluding the Lehman Swaps but including the Internal Swaps. (PX Demo. 20 [accepted without objection in lieu of Dudney rebuttal testimony, Trial Tr. at 1870-1871].)

Based on this credible testimony that the threshold for the collateral call was met without the Lehman Swaps, the court holds that the third collateral call did not constitute a material breach of the contract, notwithstanding UBS's improper inclusion of the Lehman Swaps in the calculation.[11] (See generally Awards.Com v Kinko's, Inc., 42 AD3d 178, 187 [1st Dept 2007], affd 14 NY3d 791, 793 [2010]; Frank Felix Assocs., Ltd. v Austin Drugs, Inc., 111 F3d 284, 289 [2d Cir 1997] [under New York law, for a breach to be material, "it must go to the root of the agreement between the parties"] [internal quotation marks and citations omitted].)

[11] In view of this holding that the Deposit Threshold Exposure Amount exceeded $300 million as of November 7, 2008, the court need not reach UBS's contention that the collateral call was proper because the Deposit Threshold Exposure Amount exceeded $300 million as of December 2, 2008, prior to the termination of the transaction. (Ps.'s Findings, at 15 n 10.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

As discussed above, there is no dispute that the Fund Counterparties failed to meet the third collateral call. The court accordingly finds that the Fund Counterparties breached the SWA and turns to the issue of damages.

DAMAGES

Designation of Ineligible Securities

A critical issue in determining UBS's damages is whether UBS may recover damages for CDSs that UBS retained after its termination of the 2008 transaction, under these circumstances in which UBS did not designate the underlying reference obligations for any of the CDSs as "Ineligible Securities." Resolution of this issue requires interpretation of the SWA. Highland and UBS both contend that the SWA is unambiguous as to whether Ineligible Securities must be designated, but assert fundamentally inconsistent readings of the Agreement. (Ds.'s Findings, ¶¶ 44-49; see Ps.'s Findings, at 29 n 21.)

As held above, the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace, 86 NY2d at 548.) Ambiguity will be found to arise where the terms of a contract are "subject to more than one reasonable interpretation." (Universal Am. Corp., 25 NY3d at 680 [internal quotation marks and citation omitted].) As also held above, a court should construe a contract so as to give full meaning and effect to its material provisions, and should read the contract as a whole and so as not to render any portion meaningless, if possible. (See Beal Sav. Bank, 8 NY3d at 324-25.)

Sections 5 (A), 5 (B), and 6 of the SWA are relevant to the calculation of CDS damages: Section 5 (A) provides for the calculation of losses with respect to CDSs removed from the warehouse during the term of the Agreement or "otherwise pursuant to Section 6"; Section 5 (B) (2) governs the calculation of losses upon a closing; and Section 6 governs this calculation in the event of a failure to close, incorporating terms from Sections 5 (A) and 5 (B).

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Section 6 provides in pertinent part:

> "(A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
>
> . . .
>
> (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

CDS Losses are in turn defined in Section 5 (B) (2), the closing provision, as:

> "(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, plus (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, plus (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the 'CDS Losses') . . . ."

Relying on the requirement in the definition of CDS Losses that Reference Obligations be designated as Ineligible Securities, Highland argues that "[t]he term 'CDS Losses'

unambiguously limits UBS's recovery for unrealized (mark-to-market) losses to securities designated as 'Ineligible Securities,' and the Court is bound to enforce the agreement pursuant to its unambiguous terms." (Ds.'s Findings, ¶ 46.) Put another way, Highland argues that UBS may recover mark-to-market losses only on CDSs that have been designated Ineligible Securities. (Id., ¶ 53.)[12] UBS asserts, among other things, that under Section 6, UBS may terminate, novate, or retain CDSs regardless of eligibility, that ineligibility designations are not relevant absent a closing, and that Highland's reading renders meaningless other provisions of the SWA. (Ps.'s Findings, at 29 n 21.)

Upon close reading of the SWA, the court concludes that the SWA is not ambiguous with respect to ineligibility designations and that, under Section 6, upon the failure to close UBS is entitled to retain CDSs and to recover losses for the retained CDSs, without first designating the underlying Reference Obligations as Ineligible Securities. Section 6 (A) expressly provides for UBS to terminate or novate the CDSs, and does not require UBS to first make such designation. Although Section 6 (A) does not also, by its terms, provide for UBS to retain CDSs, a reading of the contract as a whole leaves no question that UBS was not only entitled to retain the CDSs upon the failure to close, but also that it was entitled to recover losses on the retained CDSs without first designating the underlying Reference Obligations as Ineligible.[13]

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[12] Highland's damages expert, Adam Warren, testified that realized losses are losses sustained where a transaction has been closed out and an actual cash payment has been made. (Warren Testimony, Trial Tr. at 1249, 1253.) He also testified that, in his opinion, there were no unrealized losses in the Synthetic Warehouse because no assets had been designated as ineligible. (Id. at 1257 ["[O]ur computation is that there are no unrealized losses in the Synthetic Warehouse because of the need to . . . create a designation of ineligible. And we saw no evidence of any Synthetic Warehouse asset being designated ineligible"].)

[13] In its decision of defendants' motion for summary judgment, this court held that it could not determine on the record of that motion whether the SWA was ambiguous with respect to UBS's entitlement to recover losses on retained CDSs, pursuant to Section 6, without a prior designation of such assets as Ineligible Securities. (2017 NY Slip Op. 30546[U], 2017 WL 1103879, * 4-7 [Sup Ct, NY County Mar. 13 2017], affd 159 AD3d 512, lv dismissed 32 NY3d 1080.) With the benefit of the parties' extensive trial briefing on this issue, the court now concludes, for the reasons discussed further in the text, that the agreement is not ambiguous.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

As the above-quoted definition of CDS Losses in Section 5 (B) (2) shows, this definition relates to Credit Default Swaps which, upon a closing, have been "terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security . . . ." After setting forth the definition of CDS Losses (and CDS Gains) in the context of a closing, Section 5 (B) (2) further provides: "To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof."

Significantly, while Section 6 (C) incorporates the defined term CDS Losses, the term CDS Losses also incorporates both the definition of Ineligible Security and the term Replacement Losses from Section 5 (A). These incorporated terms modify the definition of CDS Losses where a closing does not occur.

The definition of Ineligible Security pertains to securities that are ineligible for securitization upon a closing. The SWA thus defines Ineligible Security, in pertinent part, as "any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination . . . ." (SWA, Exhibit A-2 [emphasis added].)

Section 5 (A), which defines the term Replacement Losses, distinguishes between such Losses sustained during the term of the Agreement and those sustained upon termination in the event of a failure to close pursuant to Section 6. Section 5 (A) primarily addresses the removal of CDSs from the warehouse "during the term of this [the SWA] Agreement" where "a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria" that must be met for securitization. This section provides that "UBS shall be entitled in

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio." Section 5 (A), however, continues:

> "To the extent any such Credit Default Swaps are terminated or novated, or at UBS's discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps [according to the formula that follows]."

(emphasis added). Section 5 (A) then sets forth a formula for calculating Replacement Gain and Replacement Loss, which specifically provides for such calculation not only upon termination or novation but also upon UBS's retention of the CDSs. (SWA § 5 [A] [1] – [3].)

Section 5 (A) thus clearly contemplates that UBS may novate, terminate, or retain CDSs both during the term of the Agreement and in the event of a failure to close. The Section affords UBS the discretion to terminate, novate, or retain CDSs "pursuant to Section 6," as distinct from its discretion to do so upon a designation of the underlying Reference Obligation as Ineligible during the term of the Agreement. Any other reading would render meaningless the Section 5 (A) provision "or otherwise pursuant to Section 6."

Moreover, in order to reconcile all of the provisions of the SWA, the Section 5 (B) (2) definition of CDS Losses, when used in Section 6, cannot be construed as requiring a designation of Ineligible Securities. As discussed above, Ineligible Securities are defined as securities ineligible for sale at a closing. Section 5 (B) (2), which governs the calculation of losses where a closing will occur, requires the designation of Ineligible Securities to facilitate the parties' calculation of losses on assets deemed ineligible for inclusion in the securitization that will occur upon the closing. When a closing will not occur, none of the CDSs or other assets will be securitized, and there is no need to distinguish between eligible and ineligible assets. While the

definition of CDS Losses with the Ineligible Security designation requirement serves the purposes of Section 5 (B) (2) in the event of a closing, it is inconsistent with the CDS Loss calculation required in Section 6 where the closing does not occur.

Contrary to Highland's apparent contention (Ds.'s Findings, ¶ 46), a reading of the CDS Loss provision in Section 6 to permit calculation of losses on retained assets without an Ineligible Security designation does not violate the fundamental precept that a defined term in a contract must be given effect. (See generally Mionis v Bank Julius Baer & Co., 301 AD2d 104, 109 [1st Dept 2002].) Rather, the CDS Loss definition, as used in Section 6, is modified by the contractual provisions discussed above.

Although inartfully drafted, the SWA is not ambiguous. If the contract is read as a whole, and all of the provisions are given meaning, it is reasonably susceptible to only one meaning—namely, that CDS Losses for retained assets may be recovered without a designation of the underlying Reference Obligations as Ineligible Securities where, as here, the contract has been terminated before the closing.[14] The court accordingly holds that UBS is entitled to recover damages for the retained CDSs in the Synthetic Warehouse.[15]

Calculation of Damages

As discussed above, UBS terminated the transaction based on the Fund Counterparties'

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[14] The court notes that the SWA and the Cash Warehouse Agreement (CWA) both contain provisions which state that the two agreements "set forth the entire understanding of the parties hereto relating to the subject matter hereof . . . ." (SWA, § 18; CWA, § 18.) Assuming, without deciding, that these agreements should be read together in construing the SWA, the court finds that, although the assets at issue in the SWA and the CWA have markedly different attributes, the CWA is consistent with the SWA to the extent that the CWA permits UBS, in the event a closing does not occur, to retain and recover for losses on the CLOs that are the subject of the CWA, without a designation of the CLOs as Ineligible Securities. (See CWA, §§ 5 [A], 7 [A].)

[15] In view of this holding that the SWA is not ambiguous as to whether CDS losses may be recovered without designation of the underlying Reference Obligations as Ineligible Securities, the court has not considered any parol evidence, either documentary or testimonial, in construing the SWA in this regard. Without limiting the foregoing, the court has not considered prior drafts of the SWA, which Highland offered in the event parol evidence were to be admitted. (See Ds.'s Findings, ¶ 53.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

failure to meet the third collateral call. UBS sent Highland a notice, dated December 3, 2008, stating that a Termination Date had occurred under the Warehouse Agreements but that it would forbear from exercising its remedies for two days to permit the Fund Counterparties to meet this collateral call. (PX 7.) UBS then sent a further notice to Highland, dated December 5, 2008, stating that it would exercise its remedies as the call had not been met. (PX 8.) UBS held a public auction of the assets in the Knox Warehouse on December 16, 2008. By notice dated December 19, 2008, UBS demanded payment for its claimed losses based on the results of the auction—$157,949,885.47 for the assets in the Cash Warehouse (PX 10) and $587,357,060.59 for the assets in the Synthetic Warehouse. (PX 11.) UBS also notified Highland that it elected to retain the Collateral Obligations in the Cash Warehouse. (PX 10.)

CDS Damages

Highland argues that even if the recovery of damages for the CDSs is not barred by UBS's failure to designate the Reference Obligations for the CDSs as Ineligible Securities (a claim this court has rejected above), UBS has not proved damages for these CDSs. Specifically, Highland contends that UBS did not comply with the contractual requirements for calculation of losses because its post-termination auction was untimely and otherwise improper. (Ds.'s Findings, ¶¶ 57-59.) Highland also contends that UBS's marks do not otherwise "establish a reasonable connection between the asset value and UBS's alleged damages." (Id., ¶¶ 60-65.) UBS disputes these assertions. (Ps.'s Findings, at 29-31.)

Sections 6 (C), 5 (B) (2), and 5 (A) (3) are the provisions of the SWA that govern the calculation of CDS Losses upon termination. Section 6 (C) provides in full:

> "To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

> amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

As discussed above, the definition of CDS Losses in Section 5 (B) (2) includes Replacement Loss, the calculation of which is governed by Section 5 (A). With respect to Replacement Loss relating to CDSs that are retained, Section 5 (A) (3) provides in full:

> "To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS if unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS's position under such Credit Default Swap."

The SWA, by its terms, thus contemplated that payment would be made within three days after the Termination Date, subject to notice from UBS. As the SWA provided for an auction to calculate the amount of the losses, it also contemplated that an auction could or would occur within that three day period.

By the terms of UBS's notices to Highland, although a Termination Date had occurred as of December 3, UBS extended the Fund Counterparties' time to meet the third collateral call until December 5. The court thus finds that the Fund Counterparties' breach of the Agreements for failure to meet the third collateral call occurred on December 5. UBS did not conduct the auction to calculate the CDS Losses until December 16.

UBS's delay of approximately 11 days in conducting the auction, while seemingly de minimis, in fact had momentous financial consequences, given that the delay occurred in the wake of the September 15, 2008 Lehman bankruptcy filing and at the height of the financial crisis. With the market spiraling downward, the CDS losses ascertained through the auction process were approximately $117 million more than the losses calculated by using UBS's marks

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

on either December 3 or December 5. (PX Demo. 21; DX Demo. 12 [showing UBS and Highland marks as of December 3 and 5; PX Demo. 28 at 60 [Ps.'s Closing Statement Demonstrative Exhibit, acknowledging that CDS damages, as calculated based on the auction, exceeded the losses calculated using UBS's marks on December 3 and 5 by over $117 million].)[16]

UBS contends that the three day payment period was for its benefit and that it "could exercise its right to get paid after three business days without waiver." (Ps.'s Findings, at 28.) The court agrees that UBS's delay in demanding payment or holding the auction did not result in a waiver of its right to seek payment of its damages resulting from the Fund Counterparties' breach. (See SWA § 20 ["Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver hereof. . . ."].) Highland correctly contends, however, that the delayed auction could not serve as a basis for calculating UBS's damages because the results of the auction did not reflect market conditions as of the date of termination or breach. (See Ds.'s Findings, ¶ 57.)

As explained by the Court of Appeals:

> "It has long been recognized that the theory underlying damages is to make good or replace the loss caused by the breach of contract. Damages are intended to return the parties to the point at which the breach arose and to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach."

(Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256, 261 [1998] [internal citations omitted].)

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[16] At the trial, the parties stipulated to dispense with rebuttal testimony from plaintiffs' damages expert, Louis Dudney and, in lieu of such testimony, to the admission into evidence of plaintiffs' Demonstrative Exhibits 20 and 21, and defendants' Demonstrative Exhibit 12. (Trial Tr. at 1868, 1870 [Stipulation].) PX Demo. 21 and DX Demo. 12, which were prepared by Mr. Dudney, calculated damages using plaintiffs' and defendants' marks, respectively, on December 3 and 5, 2008. (Trial Tr. at 1870-1877.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

It is further settled that damages need not be proven with mathematical certainty. It is sufficient that a reasonable basis for the calculation of damages be shown. (See generally J.R. Loftus, Inc. v White, 85 NY2d 874, 877 [1995] ["While a plaintiff may recover damages when the measure of damages is unavoidably uncertain or difficult to ascertain, a reasonable connection between a plaintiff's proof and a [] determination of damages is nevertheless necessary"]; CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, *2 [US Dist Ct SD NY, Sept. 29, 2011] ["The law of New York is clear that once the fact of damage has been established, the non-breaching party need only provide a stable foundation for a reasonable estimate [of damages]" [internal quotation marks and citations omitted, brackets in original].)

UBS's December 16, 2008 auction cannot satisfy either of these standards because, as held above, the auction did not provide a reliable basis for determining UBS's losses at, or even shortly after, the breach, due to the exceptional circumstances presented by the financial crisis.[17] The court accordingly turns to the alternative basis advanced by UBS for the calculation of damages—its marks on December 5, 2008. (Ps.'s Findings, at 29.)

It is well settled that "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma v Skaarup Ship Mgt. Corp., 916 F2d 820, 825 [2d Cir 1990], cert denied 499 US 907 [1991] [applying New York law and citing Simon v Electrospace

[17] There is authority that "in accordance with the objective that a party seeking recovery for breach of contract is entitled 'to be made whole' as of the time of the breach, the [factfinder] should be able to make its valuation determination on all relevant elements of the case, whether dated prebreach, on the date of breach, or 'some short time period thereafter.'" (Credit Suisse First Boston v Utrecht-America Fin. Co., 84 AD3d 579, 580 [1st Dept 2011] [quoting Boyce v Soundview Tech. Group, Inc., 464 F3d 376, 389 [2d Cir 2006] [other internal quotation marks and citations omitted].) Although the auction was held shortly after the breach, this authority does not support calculation of damages based on the auction results, as the auction did not provide a reliable basis for assessing the losses.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Corp., 28 NY2d 136, 145-146 [1971], motion to amend remittitur and clarify denied 28 NY2d 809].) In accordance with the objective that the injured party be made whole, "damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.)

UBS offered credible testimony that its December 5, 2008 marks reasonably reflected the market value of the CDSs as of the December 5 breach date. In particular, Timothy LeRoux, who at the time of the transaction was second in command to Mr. Grimaldi on the UBS trading desk (LeRoux Testimony, Trial Tr. at 1640), gave credible testimony that, in the regular course of business, the trading desk "marked to market" hundreds of CLO assets, and every week or two was required to assign values on every one of the assets, both cash and synthetic, in the Knox Warehouse. (Id. at 1724.) Mr. LeRoux also described the marking process and identified information, including public information as to offers and bids on CDSs in the marketplace, that UBS considered in developing "objective" prices. (Id. at 1727, 1745-1750.) Mr. Grimaldi also testified that, although the trading desk performed the mark-to-market valuation of the assets in the Knox Warehouse, the UBS valuation group established oversight due to the volatility of the market and "would look at other market observations and make sure that those [the trading desk marks] were in line with the marketplace." (Grimaldi Testimony, Trial Tr. at 207-208.)

Highland does not dispute that the mark-to-market process is a methodology for determining loss in market value of retained assets. (See e.g. Testimony of Adam Warren [Highland's damages expert], Trial Tr. at 1268-1269; Testimony of Philip Braner [Highland former executive], Trial Tr. at 469-472; Testimony of UBS's Timothy LeRoux, Trial Tr. at 1640, 1727-1729.)

Rather, in claiming that UBS's marks are not competent evidence on which to award damages, Highland suggests that the setting of marks by the trading group involved a conflict of

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

interest, because the trading group's bonuses were based on the performance of the mark-to-mark assets and the group had the incentive to inflate the value of the assets. (Ds.s' Findings, ¶¶ 61-62.) Highland makes no showing that UBS inflated the value of the CDSs or that trading groups do not routinely develop marks. Moreover, Highland's assertion that "UBS's trading group alone set the marks for the Knox Warehouse assets" (Ds.'s Findings, ¶ 62) ignores UBS's credible testimony, discussed above, that the valuation group exercised oversight in connection with the development of the marks.

Highland's further assertion that its own marks are more reliable (Ds.'s Findings, ¶ 65) is unsupported by persuasive evidence. Philip Braner, who ultimately became Chief Operating Officer of the Highland Capital Management CLO Group and COO of Highland Financial Partners (Braner Testimony, Trial Tr. at 397), testified that Highland was itself tracking marks on the assets in the Knox Warehouse (id. at 615) and had an "internal valuation team that was responsible for accumulating marks" in a process in which portfolio managers of the Highland funds participated. (See id. at 467.) While Highland appears to assert that its marks are more reliable than UBS's because they were set by a valuation team, Highland fails to show that the role of its valuation team differed in any material respect from that of the UBS valuation group that performed oversight on its trading group in the marking process.

Notably, Highland fails to explain how its methodology in setting marks was more reliable than UBS's. Adam Warren, Highland's damages expert, forthrightly testified that he was not opining on the reasonableness of any marks in this case (Warren Testimony, Trial Tr. at 1247-1248), and he did not in fact give any testimony on whether UBS's or Highland's marks were more reliable.

The evidence at trial also demonstrated that Highland, like UBS, set marks on the CDSs on an asset by asset basis from March 2008 through October 2008. While there were differences

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

between Highland's and UBS's marks during this period, the Highland and UBS marks in the month of October were substantially similar. The difference in the marks did not escalate substantially until November 2008. (PX Demo. 9, at 4.) Mr. Dudney gave testimony, which was not disputed, that although Highland, like UBS, had been setting marks on an asset by asset basis, Highland stopped doing so as of October 2008 and, in a November 30, 2008 calculation of damages, attributed the same mark (37) to each asset. (Dudney Testimony, Trial Tr. at 883-884, 905-909, DX 116.) Highland offered no explanation for this change in methodology. Mr. Dudney, in contrast, gave plausible testimony that this use of the same mark did not make sense given the deterioration of the market. (Id. at 908.)

In sum, based on the credible evidence at the trial, the court holds that UBS has met its burden of demonstrating that its December 5, 2008 marks provide a reasonable basis, under the circumstances, for the calculation of damages at the time of the breach. In so holding, the court rejects Highland's not fully articulated contention that only an auction, and not a mark-to-market methodology, is a reliable method for calculating damages. (See Ds.'s Findings, ¶ 59.) Highland's reliance on the testimony of its damages expert, Adam Warren, in support of this contention (see id.) is misplaced. While Mr. Warren testified that CDSs are "bespoke contracts," he did not give any testimony that an auction was required to ascertain their value.

Further, as held above, the auction did not provide a reliable basis for determining UBS's damages due to the volatility of the market at the time of the auction. It bears emphasis that, although the market was also volatile at the time the December 5, 2008 marks were accumulated, Highland has not advanced an alternative, other than the non-viable auction, to the mark-to-market valuation methodology. Nor has Highland made any showing that the market value of

the CDSs was not reasonably determinable as of the date of breach using the mark-to-market valuation methodology.[18]

The court further holds that UBS has met its burden of demonstrating the reasonableness of its calculation of damages using those marks. UBS's and Highland's experts both provided the court with calculations of damages using UBS's and Highland's marks, respectively, as of December 5, 2008. Mr. Warren confirmed that his main differences with Mr. Dudney regarding the calculation of damages for the Synthetic Warehouse were that Mr. Dudney considered it appropriate, and he did not, to include damages for unrealized CDS losses and for the 20 Internal Swaps in which UBS was both the protection seller and the protection buyer. (Warren Testimony, Trial Tr. at 1298; DX Demo. 12; PX Demo. 21; see also Dudney Testimony, Trial Tr. at 1004.)

Mr. Warren excluded from his damages calculation unrealized CDS losses for all CDSs as to which a designation of ineligibility had not been made. He testified that his basis for doing so was his understanding of the contract—i.e, his understanding that the SWA required such designation—and not industry custom. (Warren Testimony, Trial Tr. at 1281-1282.) For the reasons discussed above, this court has rejected Highland's position that the SWA should be

[18] In its post-trial briefing, Highland sought a finding that if UBS is held to be entitled to recover damages for CDS losses, Highland's marks are more reliable than UBS's for determining those damages. (Ds.'s Findings, ¶ 65.) Highland did not argue that the market value of the losses could not reasonably be determined by using marks. In contrast, in support of its claim that it is entitled to an offset against CDS damages for post-breach termination payments received by UBS on the CDSs, Highland questioned the accuracy of the market valuation at the time of the breach. Highland thus asserted in a footnote: "Given the scant market pricing data available at the time of the breach, post-termination payments and asset dispositions are relevant for the additional reason that they provide a more accurate measurement of the actual value of the Knox assets." (Ds.'s Post-Trial Memo., at 8 n 5.) This assertion is unsupported by any citation to trial testimony. More important, at the trial Highland did not offer any expert testimony that the mark-to-market methodology was not a reliable basis for calculating the CDS damages. For the additional reasons set forth in the section of this decision on Highland's requested Offset for Post-Breach Appreciation In CDS Asset Value, the court finds that offset of post-breach payments received by UBS on the CDSs would be inconsistent with calculation of UBS's damages based on their market value at the time of the breach.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

construed as requiring ineligibility designations as a condition of the inclusion of unrealized losses on the CDSs in the calculation of damages. Also for the reasons discussed above, the court has rejected Highland's position that the losses on the Internal Swaps should not be included in this calculation.

Review of the experts' calculations shows, moreover, that when such losses are included in the calculations, the difference between Highland's and UBS's totals is substantially reduced. As previously noted, the parties stipulated to the introduction into evidence of charts prepared by Mr. Dudney comparing his and Mr. Warren's calculations of CDS damages using UBS's and Highland's marks as of December 5, 2008. Using Highland's marks, Mr. Dudney calculated CDS mark-to-market losses of $388,284,750, compared to Mr. Warren's calculation of $26,952,895—a difference of $361,331,855. (DX Demo. 12.) Using UBS's marks, Mr. Dudney calculated losses of $470,113,605, compared to Mr. Warren's calculation of $26,952,895—a difference of $443,160,710. (PX Demo. 21.)

The difference in the totals is largely due to Mr. Warren's exclusion from his calculation of all unrealized CDS losses and all losses for the Internal Swaps. (Warren Testimony, Trial Tr. at 1296-1299.) His calculation of $26,952,895 for CDS losses includes only realized CDS losses. (Id. at 1250.) According to Mr. Warren, the Internal Swaps account for $93,952,173 of the CDS damages using UBS's marks, or $68,801,027 using Highland's marks. (Id. at 1269.) Although Mr. Warren disputed UBS's entitlement to unrealized CDS losses, he performed a calculation including such losses. Using UBS's marks as of December 5, 2008, these losses totaled $355,487,606. (DX Demo. 10, at 14.) Using Highland's marks as of that date, these losses totaled $299,118,973. (Warren Testimony, Trial Tr. at 1269; DX Demo. 10, at 14.) Mr. Warren's total, using UBS's marks, for the Internal Swaps ($93,952.173) and the unrealized CDS losses ($355,487,606) was $449,439,779. (DX Demo. 10, at 14.) As stated above, Mr. Dudney's

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

calculation of total Synthetic Warehouse losses, using UBS's December 5, 2008 marks, was $470,113,605. Given the magnitude of the damages, this disparity is not material.

The court accordingly holds that UBS incurred losses in the Synthetic Warehouse of $470,113,605 as of December 5, 2008, the date of the breach, subject to the adjustments discussed below.

CLO Damages

Highland does not dispute that unrealized losses are recoverable for the CLO assets. (Warren Testimony, Trial Tr. at 1293.) Moreover, UBS's (Mr. Dudney's) and Highland's (Mr. Warren's) calculations of the CLO losses as of December 5, 2008 are the same: Using Highland's marks, these losses were $106,157,101. (DX Demo. 12, at 2.) Using UBS's marks, the losses were $128,848,101. (PX Demo. 21.) Having concluded that UBS's damages were properly calculated based on UBS's marks as of December 5, 2008, the date of the breach, the court holds that UBS incurred losses in the Cash Warehouse of $128,848,101, subject to the adjustments discussed below.

Adjustments to Damages Calculation

In calculating the Synthetic and Cash Warehouse losses, Mr. Dudney and Mr. Warren made adjustments for the same items: carry (premiums and interest), collateral value, financing fees, and financing savings. Mr. Dudney's adjustment of $79,587,557 and Mr. Warren's adjustment of $76,632,634 did not differ materially. (PX Demo. 21.) According to Mr. Warren, the difference of approximately $3 million is due to Mr. Warren's exclusion of the Internal Swaps in calculating the carry. (Warren Testimony, Trial Tr. at 1298-1299.) As the court has held that the Internal Swaps were properly included in the damages calculation, Mr. Dudney's adjustments will be accepted.

Reducing UBS's damages by the adjustments, the court holds that UBS sustained total

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

damages of $519,374,149 (Cash Warehouse Losses of $128,848,101 plus Synthetic Warehouse Losses of $470,113,605 minus $79,587,557).

OFFSETS

Offset for Post-Breach Appreciation In CDS Asset Value

A central issue in this action is whether Highland is entitled to an offset against UBS's damages for appreciation in the value of the CDSs after the breach. The parties stipulated that UBS received post-breach termination payments net of carry on the CDSs, including the Internal Swaps, in the amount of $202,223,059. (DX 491.) It is undisputed that these payments were received months and, for many of the CDSs, years after the termination of the transaction. (Ds.'s Post-Trial Memo., at 10 [acknowledging that UBS "liquidated the assets years later"]; PX 335 [spreadsheet showing termination dates for CDSs through 2011].)

Highland argues that, at the time the transaction was terminated, "frozen credit markets had created a severe mismatch between the assets' alleged market value and their actual value based on their cash flows." (Ds.'s Post-Trial Memo., at 10.) Highland further argues that UBS was able to sell these assets for hundreds of millions of dollars more than their December 2008 marks and that, while UBS is entitled to retain the sale proceeds, "it cannot ignore these monies in calculating the harm it actually suffered." (Id. at 11.) According to Highland, if disposition of the assets after the termination is not considered, UBS will receive "an enormous windfall." (Id.) UBS acknowledges that if a non-breaching party obtains a benefit "because of the breach," the benefit must be offset against the non-breaching party's damages. (Ps.'s Post-Trial Memo., at 6 [emphasis UBS's].) UBS argues, however, that the Fund Counterparties' breach was not a but for cause of the post-breach payments UBS received for the CDSs. (Id. at 7.) Rather, subsequent gains that resulted from UBS's disposition of the assets were "the result of UBS's contractual rights [to retain the assets] in the event of any termination and of its subsequent

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

investment strategy." (Id. at 14.) According to UBS, the Fund Counterparties' proposed offset would deprive UBS of the benefit of the bargain and result in a windfall for the Fund Counterparties. (Id.)

As discussed above, contract damages are intended to make "good or replace the loss" caused to a party by the breach of contract and "to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.) Further, "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma, 916 F2d at 825 [applying New York law and citing Simon, 28 NY2d at 145-146].)

The calculation of damages is also subject to the fundamental precept that where a non-breaching party acquires a "benefit or opportunity for benefit . . . because of the breach, a balance must be struck between benefit and loss" and the benefit must be offset against the non-breaching party's damages. (Indu Craft, Inc. v Bank of Baroda, 47 F3d 490, 495 [2d Cir 1995] [applying New York law]; accord Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, 289 [SD NY 2010] ["[I]f a victim derives a benefit from the breaching party's breach of contract, the breaching party only is responsible for the victim's net loss"], reconsideration denied 2010 WL 3431132; Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, 84 [1987], rearg denied 70 NY2d 694 [holding, in a "cover" action governed by the Uniform Commercial Code, that "'[g]ains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach'"] [quoting 5 Corbin, Contracts § 1041].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Here, although UBS and Highland agree that any benefit derived by UBS because of the breach must be offset against its losses, neither party has cited, and the court's own research has not located, any case in which a court has considered how to apply this precept to a non-breaching party's retention of assets upon a failed securitization transaction and realization of subsequent gains. There is, however, a substantial body of law involving a breaching party's failure to deliver or purchase assets subject to fluctuations in value, in which the courts have assessed damages based on the market value of the assets at the time of breach and have declined to consider any subsequent increases or decreases in value of the assets. As discussed further below, the court concludes that these cases are inconsistent with the offset sought by Highland.

As the Second Circuit has explained in reviewing this body of law, New York courts reject damage awards "based on what 'the actual economic conditions and performance' were in light of hindsight." (Sharma, 916 F2d at 826, quoting Aroneck v Atkin, 90 AD2d 966, 967 [4th Dept 1982], lv denied 59 NY2d 601 [1983].) "They have explicitly rejected the use of subsequent changes in value or profits where they would increase an award, and where they would decrease the award." (Sharma, 916 F2d at 826 [internal citations omitted].)

In the securities context, courts have repeatedly held that the damages for failure to deliver or purchase shares of stock should be based on their market value at the time of breach, and not on any subsequent increase or decrease in their value. (Simon, 28 NY2d at 145-146 [where the seller breached a contract to deliver shares, holding: "The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach. The rule is precisely the same when the breach of contract is nondelivery of shares of stock"] [internal citations omitted]; Aroneck, 90 AD2d at 967 [where the buyer breached a contract to purchase shares, holding that

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

damages should be based on market value at the time of breach, and rejecting the buyer's theory that the "value should be based on the actual economic conditions and performance" of the company post-breach]; Emposimato v CIFC Acquisition Corp., 89 AD3d 418, 421 [1st Dept 2011] [quoting Aroneck and citing Simon in holding that "[i]n the case of a breach of contract to sell securities, expectation damages are calculated as 'the difference between the agreed price of the shares and the fair market value at the time of the breach'"]; Oscar Gruss & Son, Inc. v Hollander, 337 F3d 186, 197 [2d Cir 2003] [following Simon and Aroneck in a case involving the defendant's breach of a contract to deliver warrants]; see also Kaminsky v Herrick Feinstein LLP, 59 AD3d 1, 11-12 [1st Dept 2008], lv denied 12 NY3d 715 [2009] [holding that damages for breach of contract to deliver shares prior to an initial public offering (IPO) should be awarded based on the value of the shares at time of the breach, not their higher value post-IPO].)

The court holds that these cases involve transactions that are analogous to (although far less complex than) the transaction at issue, and apply the same measure of damages that this court has adopted above—namely, the measure of damages based on the market value of the assets on the date of the breach. These cases accordingly govern the calculation of damages here. The court notes, moreover, that sound reasons support the application of this measure of damages without consideration of post-breach fluctuations in the value of the assets.

As the Second Circuit reasoned, a contrary rule that would permit calculation of damages at the time of trial "would be a two-edged sword, because courts would have to diminish damage awards where the value of the item decreased or where losses were encountered subsequent to the breach as well as enhance them where conditions improve. However, New York courts have expressly refused to adopt this 'wait and see' theory of

damages." (Sharma, 916 F2d at 826.) In addition, although the court does not adjust for changes in the value of the shares when calculating damages according to the date of breach measure, the parties themselves can protect against changes in value by hedging or acquiring shares in the market. As the Second Circuit further reasoned: "To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under- or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income." (Sharma, 916 F2d at 826; see also Simon, 28 NY2d at 146 [where the seller breached a contract to deliver shares, reasoning that "[i]f plaintiff were anxious to own the shares rather than obtain their value, he was free to purchase them in the market. His cause of action should not and may not be converted into carrying a market 'call' or 'warrant' to acquire the stock on demand if the price rose above its value as reflected in his cause of action"].)

The court further holds that application of the date of breach measure of damages, without adjustments for fluctuations in the value of the assets, will serve the objective of putting UBS in the position it would have been in had the contract been performed. If the securitization had closed, UBS would have been entitled, under the express terms of the SWA, to novate to the Issuer its positions as protection seller on all of the eligible Knox CDSs. (SWA § 5 [B] [1].) As a result of the breach, UBS was forced to assume a substantial risk of loss under the CDSs that would have been novated to the Issuer had the closing occurred. As discussed above, the loss in market value of the retained CDSs as of the date of breach was determined using the mark-to-market methodology. More specifically, as confirmed by both UBS's and Highland's experts, the mark-to-market losses calculated as of the date of breach represent the cost to UBS to exit the CDSs—

that is, the payments to be made to third-parties so that they would take on, and UBS could extricate itself from, the risk. (Warren Testimony, Trial Tr. at 1304-1306; Dudney Testimony, Trial Tr. at 894-895.) A damage award for these mark-to-market losses will therefore compensate UBS for the exposure to risk that it would not have faced had the contract been performed.

To the extent that Highland contends that a damage award is not appropriate for these mark-to-market losses because the losses were not realized, the court rejects that contention. The damage award is appropriate, notwithstanding that the losses were not realized, because, as held above, the contract affords UBS the right of recovery for such losses. (See CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, * 2 [US Dist Ct SD NY, Sept. 29, 2011] [reasoning that, where the contractual definition of loss for the purpose of calculating damages did not require the CDS protection buyer to sustain "actual loss," "[t]he absence of an actual loss on a Reference Obligation transaction, thus, is not a barrier to [the protection buyer's] recovery. . ."] [emphasis in original].)

The court further holds that the record does not support Highland's contention that UBS's post-breach gains were realized because of the breach, and that this case therefore falls under the line of authority that requires an offset for such gains. Highland in effect contends that because UBS retained the CDSs as a result of the breach, it also realized the post-breach gains because of the breach.[19] That conclusion does not follow. As held

[19] In so holding, the court rejects UBS's contention that it would have been entitled to retain the CDS assets, regardless of the Fund Counterparties' breach, because the Agreements would have terminated in any event as of March 14, 2009, at which point UBS would have had the contractual right to retain the assets. (Ps.'s Post-Trial Memo., at 8.) This assertion is not only speculative but ignores that UBS did in fact acquire the right to retain the assets upon the Fund Counterparties' breach of the Agreements as a result of their failure to meet the third collateral call. For the reasons discussed in the text, however, the court cannot accept Highland's further contention that UBS realized gains on the retained CDSs because of the breach.

above, UBS had a contractual right to retain the CDSs upon the termination of the transaction based on the Fund Counterparties' breach of the SWA by failing to meet the collateral call. The SWA does not contain any provision that limited UBS's discretion as to when to dispose of the assets after termination. Rather, as UBS persuasively argues, the gains realized as a result of the post-breach disposition of assets were attributable not to the breach itself but to UBS's assumption of the risk of loss on the CDSs and its investment strategy as to when to dispose of them based on its assessment of the market. (See G & R Corp. v American Sec. Trust Co., 523 F2d 1164, 1175 [DC Cir 1975] [holding that while the transfer of property to the plaintiffs was caused by the defendant's breach, the profit realized by the plaintiffs from a post-breach sale was not "caused by the breach" but was "attributable to the [plaintiffs'] decision to hold [the property] until [its] condition and the market were favorable for sale"].)

Nor does Highland successfully argue that the gains realized by UBS on the post-breach disposition of the assets must be offset under general principles which require a party who suffers damages as a result of another's breach to take reasonable steps to mitigate its damages. (See Ds.'s Post-Trial Memo., at 5-9.) Highland cites cases requiring mitigation in connection with the purchase and sale of securities and transactions in other markets. (See e.g. Drummond v Morgan Stanley & Co., Inc., No. 95 Civ. 2011 [DC], 1996 WL 631723, * 2-3 [US Dist Ct SD NY, Oct. 31, 1996] [holding that where the buyer breached a contract to purchase securities, the seller must take steps to mitigate its damages by selling the securities within "a reasonable period of time"]; Saboundjian v Bank Audi (USA), 157 AD2d 278, 284-285 [1st Dept 1990] [holding that where a broker failed to execute a customer's speculative currency exchange order, the customer was required to direct execution of the trade "within a reasonable time after he learned that it had not been effected earlier"].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

These cases are inapposite, as the SWA affords UBS the contractual right to retain the securities upon the Fund Counterparties' breach. Ironically, although purporting to rely on these cases, which in fact require that the non-breaching party mitigate within a reasonable period of time, Highland argues not that UBS was required to dispose of the CDSs within a reasonable period of time after the breach but that it was required to hold them for months and, indeed, years, until the market improved. Highland thus asserts that UBS reasonably mitigated by "holding (as opposed to fire selling) fully performing interest and premium-bearing assets in the face of a dysfunctional market. . . ," and that "UBS's mitigation was not only reasonable, but required by law." (Ds.'s Post-Trial Memo., at 7.) Put another way, Highland does not identify a specific date or dates by which UBS was required to mitigate. To the contrary, without citation to any legal authority, Highland argues that UBS was required to hold the assets for an indefinite period, until the market improved, to minimize its losses.

The mitigation cases provide no support for Highland's assertion that UBS's disposition, months and years after the breach, of assets that it had a contractual right to retain, constitutes mitigation.[20] Rather, in claiming that it is entitled to "offsets" for the post-breach gains realized by UBS, Highland appears in effect to advance a measure of damages that is patently inconsistent with the fundamental tenet of the date of breach measure of damages—namely, that a non-breaching party's damages for assets with a determinable market value must be calculated

[20] Nor does Highland cite any other authority that supports its claim that it is entitled to offsets for post-breach gains realized by UBS. Cases in which a party has a duty to cover (see e.g. Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, supra) are inapposite, given UBS's contractual right to retain the CDSs upon the breach. Cases in which a party is on both sides of a securities transaction are factually dissimilar. (See Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, supra [where the plaintiff company breached a contract affording the defendant bondholders the right to convert their bonds to the company's stock, and the bondholders held open existing short positions in the company's stock on which they realized post-breach gains, the company was entitled to an offset]; see also Minpeco, S.A. v Conticommodity Servs., Inc., 676 F Supp 486, 490 [SD NY 1987] [holding that the plaintiff's losses on short futures positions on silver as a result of the defendants' manipulation of the market were required to be offset by the plaintiff's profits on physical silver positions also then held by the plaintiff].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

at the date of breach, not based on hindsight, and that neither party can select the date on which the damages calculation will be most favorable to it. Thus, a non-breaching buyer cannot select the date on which the assets "had their highest value or a period of time that was profitable but that excludes periods when losses occurred." (See Sharma, 916 F2d at 826.) Similarly, a breaching buyer cannot avoid or reduce the damages caused by its breach by invoking post-breach decreases in the value of the assets. (See id.)

The court accordingly holds that Highland's request for an offset for UBS's post-breach gains from the disposition of the CDSs must be denied.

Offset for Right of First Refusal Counterclaim

Highland Capital Management, L.P. (Highland Capital) seeks judgment on its first counterclaim against plaintiff UBS Securities LLC for breach of the Cash Warehouse Agreement provision affording it the right to purchase CLO assets in the event UBS elected to retain such assets upon the termination of the Agreement. Section 5 (A) of the CWA provides that in event of failure to close, "UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures." The Liquidation Procedures set forth in section 7 (A) of the CWA provide in pertinent part:

> "If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS's Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value."

Section 7 (A) further provides that if UBS elects to sell CLOs upon termination, "the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

the highest third party bid received by UBS for the purchase of such Collateral Obligation."

It is undisputed that Highland Capital notified UBS that it sought to purchase six of the CLOs with a bid price of $1.9 million and a notional value of $44 million, but that it sought to provide the funds for the purchase, and to settle the trades, in the name of one of its affiliates, CLO Value Fund. (Ds.'s Findings, ¶ 21.) UBS declined to agree to the sale to the Highland Capital affiliate. (Id.; DX 72; PX 292.)

The court is unpersuaded that a Highland Capital affiliate had the right, under the CWA, to purchase the CLOs. Section 7 (A), which governs the disposition of the CLO assets upon termination, expressly affords one UBS Affiliate the right to purchase CLOs. In contrast, this Section affords the right to purchase only to the Servicer, and not to any other Highland entity. The Servicer is defined as Highland Capital Management, L.P. (CWA, First Paragraph.) Reading the CWA as a whole, the court further finds that no other provision modifies or is inconsistent with this limitation. On the contrary, where the acts of Highland Capital's Affiliates were implicated, the CWA expressly referred to the Affiliates. (CWA, § 13 [B] [limiting the liability of the "Servicer" "for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders [and others] under or in connection with this Agreement, or for any decrease in the value of the Collateral Portfolio . . . ."].)[21] The court accordingly holds that the CWA unambiguously provides that the right to purchase retained CLOs is limited, among the Highland entities, to Highland Capital.

In view of this holding that the CWA is not ambiguous with respect to Highland's post-

[21] The parties to the transaction knew how to afford rights to purchase assets to Affiliates of the Servicer. The SWA provides that if the closing fails to occur, UBS may, with the consent of the related counterparty, novate CDSs "to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer). . . ." (SWA § 6 [A].) The omission from the CWA of authorization to Affiliate(s) of the Servicer to purchase CLOs is therefore notable. Moreover, Highland Capital does not claim that the concerns—regulatory and other—that are implicated in novating CDSs are comparable to those in selling CLOs.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

termination right to purchase CLOs, the court rejects Highland's contention that the court should consider evidence allegedly showing that UBS and Highland Capital had a prior course of conduct in which UBS permitted Highland Capital to settle trades "at its fund level." (Ds.'s Findings, ¶¶ 80-81.) Parol evidence of course of conduct is not admissible to construe an unambiguous contract. (See e.g. Sigismondi v Queens Transit Corp., 38 AD2d 71, 73 [2d Dept 1971], affd no opinion 32 NY2d 745 [1973]; Evans v Famous Music Corp., 1 NY3d 452, 459 [2004].)

The court further notes that even if Highland Capital could recover on its counterclaim, the damages it seeks are not recoverable. Highland Capital seeks a finding that because the CLOs continued to perform until maturity, "it would have profited $46 million" if it had been permitted to exercise its right of first refusal to purchase the CLOs. (Ds.'s Findings, ¶ 82; DX Demo. 9.) As Highland Capital acknowledges, however, the market value of the CLOs at the time of breach was $1,934,214. (DX Demo. 9.) The measure of damages, as explained above in connection with Highland Capital's claim for offsets against UBS's damages, is the market value of the assets as of the date of breach, not the increase in their value in the indefinite future.

Offset for Unjust Enrichment

Highland Capital also seeks judgment on its second counterclaim alleging that UBS was unjustly enriched by its failure to permit Highland Capital, through its affiliate CLO Value Fund, to purchase the Collateral Obligations upon termination. This claim for unjust enrichment is not maintainable as the right to purchase is governed by contract—the CWA. (See generally Pappas v Tzolis, 20 NY3d 228, 234 [2012], rearg denied 20 NY3d 1075 [2013]; Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388-389 [1987].)

Offset for Settlements with Highland Affiliates

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Highland also requests an offset for settlements with three Highland Affiliates—Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Offshore), and Highland Crusader Holding Corporation (Crusader Holding) (collectively, the Settling Highland Affiliates). Credit Strategies and Crusader Offshore were defendants in this action. UBS asserted its fraudulent conveyance cause of action against them as well as all of the other defendants. (Second Am Compl., Fifth Cause of Action.) Crusader Holding was a defendant in a separate complaint, which asserted a fraudulent conveyance cause of action against it. (UBS Secs. LLC v Highland Crusader Holding Corp., Sup Ct, NY County, Index No. 652646/11, Compl., First Cause of Action; Ps.'s Letters, dated July 21, 2015 [NYSCEF Doc. No. 397]; Jan. 7, 2016 [NYSCEF Doc. No. 398].) This court bifurcated the trial of this action, directing that it would first hold a bench trial on the breach of contract claims, which were triable by the court and are the subject of this decision, and that the fraudulent conveyance and other claims, which are triable by a jury, would be heard subsequently. (May 1, 2018 Decision on the Record [NYSCEF Doc. No. 494].)

The parties dispute whether the confidential settlements (DX 76 id and DX 77 id) may be considered in this action. They also dispute whether the settlements may be offset, pursuant to statute or case law, against the damages awarded by this decision to UBS against the Fund Counterparties on the breach of contract causes of action. (See Ps.'s Post-Trial Memo., at 14-21; Ds.'s Post-Trial Memo., at 15-19, 21-24.)

Even assuming, without deciding, that the damages may be subject to offset by the settlements, the determination of whether or to what extent the offset should be allowed must await determination of the jury trial. Where an offset for a settlement is sought, "the damages against which the settlement is sought to be applied should be determined so a proper comparison can be made between them and the damages covered by the settlement." (Carter v.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

State of New York, 139 Misc 2d 423, 429 [Ct Cl, 1988], affd 154 AD2d 642 [2d Dept 1989]; accord Moller v North Shore Univ. Hosp., 12 F3d 13, 16 [2d Cir 1993] [applying New York law].)

Here, Highland argues that the causes of action against the settling defendants are "wholly derivative of its breach-of-contract claims against the Fund counterparties." (Ds.'s Post-Trial Memo., at 16.) UBS persuasively argues, in opposition, that the fraudulent conveyance causes of action seek relief in addition to compensatory damages, including imposition of a constructive trust and punitive damages. (Ps.'s Post-Trial Memo, at 22-24; Second Am. Compl., at 57-58.) Moreover, the damages, if any, that will be awarded against the Fund Counterparties and Highland Capital on the fraudulent conveyance cause of action remain to be determined at the jury trial. On this record the court accordingly cannot compare the settlements with the fraudulent conveyance damages. Nor is there any basis for the court to determine the extent to which the settlements cover the same damages, or damages that overlap with, the breach of contract damages awarded to UBS against the Fund Counterparties by this decision. The determination of the offset issue will therefore be deferred pending the jury trial. As it appears, however, that Highland may be entitled to an offset for some or all of the settlement amounts, the court will stay enforcement, to the extent of the settlement amount ($70.5 million), of the judgment to be awarded to UBS against the Fund Counterparties for the damages for breach of contract.

Conclusion

UBS is entitled to damages for $519,374,149 on the third and fourth causes of action against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements. Enforcement of the judgment for this amount will be stayed up to $70.5 million, the amount of the settlements with the Settling Highland Affiliates.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

ORDER

It is hereby ORDERED that the parties shall meet and confer with a view to reaching agreement on the form of the judgment, including but not limited to the Allocation Percentages of CDO Fund and SOHC, and the award of interest. If the parties are unable to reach such agreement, they shall promptly settle judgment; and it is further

ORDERED that this decision shall be filed under seal for ten business days from the date hereof to afford the parties the opportunity to confer and to advise the court as to whether there is any information in the decision which is claimed by any party to be confidential. The parties shall, within five business days of the date hereof, submit a joint letter of no more than three pages, advising the court of their positions on this issue. The letter should be accompanied by a joint copy of the decision, highlighting the portion(s) of the decision which each party claims is confidential and should be redacted in the decision that will be publicly filed; and it is further

ORDERED that the parties shall telephone the court on a conference call within five business days of the date hereof (at a specific date and time to be arranged with the Clerk of Part 60) to discuss the above confidentiality issue as well as the jury trial phase of this action. The parties should be prepared to address whether, or to what extent, the jury trial may proceed in light of Highland Capital's filing of a bankruptcy petition.[22]

This constitutes the decision and order of the court.

Dated: New York, New York
November 14, 2019

MARCY FRIEDMAN, J.S.C.

[22] By letter dated October 17, 2019 (NYSCEF Doc. No. 640), counsel (Reid Collins & Tsai LLP) for Highland Capital, the Fund Counterparties and other Highland defendants, advised the court of Highland Capital's bankruptcy filing, and represented that the automatic stay does not preclude decision of the causes of action against the Fund Counterparties or the counterclaim by Highland Capital. This letter sought to reserve defendants' position on the effect of the bankruptcy filing on subsequent proceedings in this action.

EXHIBIT 5

Claim #191 Date Filed: 6/26/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   UBS AG, London Branch
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 212-713-3432	Contact phone
Contact email suzanne.forster@ubs.com	Contact email

(see summary page for notice party information)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☐ No
   ☑ Yes. Who made the earlier filing? UBS Securities LLC - this is a joint litigation claim, see

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 1,039,957,799.40 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Litigation - See attached addendum

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/26/2020
MM / DD / YYYY

/s/Asif Attarwala
Signature

Print the name of the person who is completing and signing this claim:

Name: Asif Attarwala
First name Middle name Last name

Title: Associate

Company: Latham and Watkins LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone: 312-876-7667

¨1¤}HV4&: #¥«
1023 Email asif.attarwala@lw.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
UBS AG, London Branch
UBS Securities LLC, Attn: Suzanne Forster
1285 Avenue of the Americas

New York, New York, 10019

Phone:
212-713-3432
Phone 2:

Fax:

Email:
suzanne.forster@ubs.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
Yes
Related Claim Filed By:
UBS Securities LLC - this is a joint litigation claim, see attached addendum

Filing Party:
Authorized agent

Disbursement/Notice Parties:
Latham and Watkins LLP
Andrew Clubok
555 Eleventh Street, NW

Washington, D.C., 2004-1304

Phone:
2026373323
Phone 2:

Fax:

E-mail:
andrew.clubok@lw.com

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Litigation - See attached addendum

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
1,039,957,799.40

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Asif Attarwala on 26-Jun-2020 5:17:47 p.m. Eastern Time
Title:
Associate
Company:
Latham and Watkins LLP

Optional Signature Address:
Asif Attarwala
330 North Wabash Ave.
Suite 2800
Chicago, IL, 60611
Telephone Number:
312-876-7667
Email:
asif.attarwala@lw.com

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11 (SGJ)
Debtor.	)	

ADDENDUM TO PROOF OF CLAIM FILED BY
UBS AG, LONDON BRANCH

1. UBS AG, London Branch hereby submits this addendum to its proof of claim (together, the "**Proof of Claim**") against Highland Capital Management, L.P. (the "**Debtor**") in the above-captioned chapter 11 case (the "**Chapter 11 Case**").

2. UBS AG, London Branch and UBS Securities LLC (together, the "**Claimant**" or "**UBS**") each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant's Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS's Motion for Relief*

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

from the Automatic Stay to Proceed with State Court Action [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

Factual Background

A. The Knox Transaction

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.[2]

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of $818 million in Knox Assets. (*Id.*)

[2] The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.

4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional $70 million in cash and securities as collateral (the "**Initial Restructuring Collateral**"), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled $70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address

this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties "will in aggregate bear 100% of the risk" for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional $10 million in collateral for each $100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by $100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of $200 million (bringing the aggregate losses to over $400 million).

(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over $520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, "as of the end of the year 2008," Highland knew that the Fund Counterparties owed Claimant "hundreds of millions of dollars in connection with the Knox Warehouse Agreements." (Travers Dep. at 261:8-20).) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, "devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible." (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment

for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("**HFP**"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.

16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred ***to*** the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor's affiliates—all at the Debtor's direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely "insolvent." (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally ***no*** assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant's ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant's rights to those amounts. Such actions and omissions constitute breaches of the Debtor's duty of good faith and fair dealing under the Warehouse Agreements.

B. The State Court Action and the Debtor's Efforts to Avoid Paying Claimant

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the "**State Court**") against the Debtor and the Fund Counterparties. With knowledge of Claimant's lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant's ability to recover the

amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the "**Affiliated Transferee Defendants**"), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, i.e., solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit

Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.[3] (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately $70,500,000) to

[3] Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to $1,039,957,799.44, consisting of $519,374,149.00 in damages and $520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of $128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final $1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.

26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

Reservation of Rights

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this

Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

Right of Setoff and Recoupment

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

Notice

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC
1285 Avenue of the Americas
New York, NY 10019
Attn: Suzanne Forster
Telephone: (212) 713-3432
Email: suzanne.forster@ubs.com

With a copy to:

John Lantz
UBS Securities LLC
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 713-1371
Email: john.lantz@ubs.com

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Exhibit A

Second Amended Complaint

FILED: NEW YORK COUNTY CLERK 05/11/2011 INDEX NO. 650097/2009
NYSCEF DOC. NO. 242 RECEIVED NYSCEF: 05/11/2011

CONFIDENTIAL MATERIAL SUBJECT TO THE STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION HAS BEEN REDACTED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG, LONDON BRANCH, Plaintiffs, -against- HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC., Defendants.	Index No. 650097/2009 (I.A.S. Part 60, Fried, J.) **SECOND AMENDED COMPLAINT**

Plaintiffs, UBS Securities LLC ("UBSS") and UBS AG, London Branch ("UBS AG") (collectively, "UBS"), for their Second Amended Complaint allege against defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P. ("Highland Financial"), Highland Credit Strategies Master Fund, L.P. ("Credit Strategies"), Highland Crusader Offshore Partners, L.P. (the "Crusader Fund"), Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund"), and Strand Advisors, Inc. ("Strand"), as follows:

NATURE OF THE ACTION

1. UBS brings this action to recover damages in excess of $686 million resulting from the wrongful conduct of defendants, based on causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment.

2. Counterclaim-plaintiff Highland Capital Management, L.P. ("Highland Capital") is a defendant in the action commenced by UBS (the "Highland Capital Action") concurrently with the filing of the First Amended Complaint in this action. The Highland Capital Action was consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the "Consolidated Action"). Together with Highland Capital, the Fund Counterparties fraudulently induced UBS to restructure a transaction to avoid Highland Capital's and the Fund Counterparties' contractual obligation to pay UBS over $86 million. Once Highland Capital and the Fund Counterparties succeeded in misleading UBS into restructuring the original transaction, Highland Capital and its affiliates made it impossible for the Fund Counterparties to meet their obligations to UBS by stripping the Fund Counterparties of their valuable assets through fraudulent conveyances and otherwise dealing in bad faith with their contractual obligations to UBS.

3. When UBS finally terminated the restructured transaction and demanded payment from Highland Capital and the Fund Counterparties, it was owed in excess of $686 million that the Fund Counterparties could not pay because of the misappropriations and improper transfers of assets directed by Highland Capital and the Fund Counterparties. Even after UBS demanded payment, Highland Capital and defendants engaged in further unlawful conduct that harmed UBS by [redacted]

SUMMARY OF THE ACTION

4. This action arises out of Highland Capital's efforts in the Spring of 2007 to sponsor a collateralized debt obligation ("CDO") securitization (the "Original Engagement"). In connection with the Original Engagement, UBS agreed to finance the purchase of various collateralized loan obligation ("CLO") securities, as well as credit default swap obligations that referenced similar CLO securities. UBS agreed to hold or "warehouse" the CLO securities and credit default swaps (collectively, the "Warehouse Assets" or "Warehouse Facility") for Highland Capital's benefit.

5. On or about August 15, 2007, the Original Engagement terminated by its terms without the contemplated securitization having occurred. As a result of the termination, Highland Capital and two of its affiliates, the Fund Counterparties, owed UBS in excess of $86 million related to the decline in the value of the Warehouse Assets.

6. Instead of paying UBS what it was owed, Highland Capital and the Fund Counterparties fraudulently induced UBS to restructure the Original Engagement by providing UBS with false, incomplete and otherwise misleading information concerning the Fund Counterparties' finances and assets. Using both affirmative material misrepresentations and omissions (material facts or information needed to be disclosed to make the statements actually made not misleading, and which were not disclosed, are referred to hereinafter as "Omissions"), Highland Capital, its principals and the Fund Counterparties misled UBS regarding the financial health of the Fund Counterparties and their creditworthiness, thereby causing UBS to forego recovering its losses from Highland Capital in favor of agreeing to restructure the terms of the parties' prior agreements (the "Restructured Transaction").

7. For example, the strength of the Fund Counterparties' financial statements, and their purported ability to use the hundreds of millions of dollars worth of assets

reflected therein to satisfy future obligations to UBS under the Warehouse Agreements were material to UBS's decision to agree to the restructuring. Consequently, in connection with negotiating the Restructured Transaction, UBS conditioned any restructuring on the Fund Counterparties' ability to post $70 million in cash and securities as collateral (the "Initial Restructuring Collateral") with State Street Bank and Trust Company ("State Street"), in which UBS would hold a security interest. [redacted] Highland Capital and the Fund Counterparties were able to conceal important information about the Fund Counterparties' financial weakness that was both quantitatively and qualitatively material to UBS, and which would have caused UBS not to enter the Restructured Transaction.

8. Similarly, while negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties provided UBS with financial reports and statements for the Fund Counterparties. The financial information that Highland Capital and the Fund Counterparties provided to UBS contained materially false and misleading information and Omissions concerning the financial condition of the Fund Counterparties. Among other things, [redacted]

9. In reliance on material misstatements and Omissions made by Highland Capital and the Fund Counterparties, UBS agreed to restructure the Original Engagement, and

thereby were fraudulently induced to give up contractual rights under the terms of the Original Engagement. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe that Highland Capital and its affiliates would provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets, as they in fact did.

10. Had UBS known that the Fund Counterparties could not [redacted], it would not have gone forward with the Restructured Transaction. UBS never would have agreed to the Restructured Transaction had it known prior to entering the Restructured Transaction the true status of the Fund Counterparties' financial condition and the true fair market value of the Fund Counterparties' holdings that would have been available to satisfy their then-existing and future obligations to UBS. UBS's losses described herein were directly and proximately caused by the conduct of Highland Capital and the defendants as described herein.

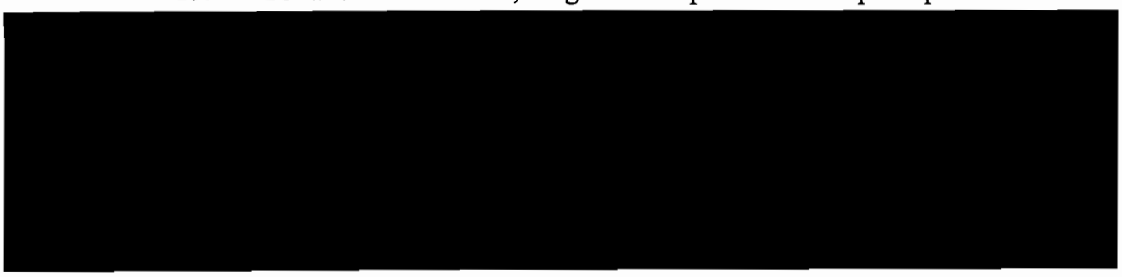
11. Almost immediately after UBS agreed to the Restructured Transaction, Highland Capital began the process of making it impossible for the Fund Counterparties to ever repay UBS what they owed. In particular, exercising its control over the Fund Counterparties, Highland Capital caused the Fund Counterparties to transfer cash for the benefit of Highland Capital and its principals, and, separately, in violation of UBS's rights, [redacted], all during a time when the Fund Counterparties owed UBS hundreds of millions of dollars.

12. For example, in or around May 2008, Highland Capital caused the dissipation of approximately $100 million in cash that CDO Fund held after it sold a long position in a company called SunCom Wireless. Highland Capital drained CDO Fund's cash resources despite CDO Fund's ever-increasing obligations to UBS. Highland Capital's bad faith conduct caused injury to UBS by making it impossible for the Fund Counterparties to satisfy their contractual obligations to UBS.

13. In September 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Because Highland Capital had routinely taken cash out of the Fund Counterparties, the Fund Counterparties were undercapitalized and lacked assets and liquidity to meet UBS's demands for additional collateral.

14. Highland Capital and its principals, including its president and founder, James D. Dondero, knew that if the Fund Counterparties defaulted on their obligations to UBS (or any other creditor), Highland Capital's ability to conduct business in the financial community and to keep or solicit investors would be harmed. Investors in Highland Capital's hedge fund family would withdraw their investments. In addition, creditors would take actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights. Highland Capital and its principals were concerned that upon the disclosure of the true state of their affairs, their business would collapse.

15. To avoid that result, Highland Capital and its principals resorted to



[redacted]

16. Highland Capital's and its principals' belated attempt to protect their reputation by continuing to fraudulently portray the Fund Counterparties as viable independent entities was ultimately unsuccessful. By late October 2008, Highland Capital could no longer continue to prop up the Fund Counterparties.

17. On or about November 11, 2008, UBS demanded additional collateral from the Fund Counterparties. The Fund Counterparties defaulted. On December 3, 2008, UBS terminated the Restructured Transaction. As a result of UBS's termination of the Restructured Transaction, the Fund Counterparties were contractually obligated to pay UBS in excess of $686 million.

18. On or about February 24, 2009, UBS filed the original complaint in this Court against the Fund Counterparties for breach of the Warehouse Agreements that had been entered in connection with the Restructured Transaction. By that time, the Fund Counterparties and SOHC's alter ego, Highland Financial, had been insolvent and unable to pay their creditors for some time. Nonetheless, Highland Capital and Highland Financial [redacted]

19. In sum, after fraudulently inducing UBS to agree to the Restructured Transaction, Highland Capital and its principals exercised their domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties for their own personal gain, i.e., solely and improperly to protect and enhance the value of Highland Capital and its principals by wrongful and improper means. In the process, they made it impossible for the Fund Counterparties to pay UBS the losses they had agreed to pay on the Warehouse Facility.

THE PARTIES

A. The Plaintiffs

20. Plaintiff UBS AG, London Branch, is a banking corporation organized under the laws of Switzerland with its principal place of business at Finsbury Avenue, London, United Kingdom.

21. Plaintiff UBSS is a limited liability company organized under the laws of Delaware with its principal places of business at 677 Washington Blvd., Stamford, Connecticut, and 299 Park Avenue, New York, New York.

B. Highland Capital

22. Highland Capital Management, L.P. ("Highland Capital") is a limited partnership organized under the laws of Delaware, with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240, and an office at 9 West 57th Street, New York, New York. Highland Capital is registered to do business in New York. Highland Capital describes itself as a 100% employee-owned partnership. Highland Capital is an investment adviser that manages a large number of investment entities that operate as hedge funds for Highland Capital's principals and affiliates, as well as unaffiliated investors. Highland Capital currently manages

over $25 billion in various assets, including structured financial products. Highland Capital also holds direct and indirect equity and ownership interests in the entities that it manages, including in Highland Financial, the Fund Counterparties and the Affiliated Transferee Defendants. James D. Dondero is the President of Highland Capital, as well as one of its founders. Concurrently with filing the First Amended Complaint in this Action, UBS commenced a separate action against Highland Capital (the "Highland Capital Action"). The Highland Capital Action was later consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the "Consolidated Action").

C. The Defendants

1. Defendant Strand

23. Defendant Strand Advisors, Inc. ("Strand") is Highland Capital's general partner. Strand is a Delaware corporation principally engaged in the business of serving as the general partner of Highland Capital. As Highland Capital's general partner, Strand is responsible for Highland Capital's liabilities and obligations and regularly conducts business in New York, or causes its affiliates to conduct business in New York.

2. Defendants Highland Financial and SOHC

24. Highland Special Opportunities Holding Company ("SOHC") is a company organized under the laws of the Cayman Islands, with its offices at Walker House, PO Box 908GT, Mary Street, George Town, Grand Cayman, Cayman Islands. SOHC is a wholly-owned subsidiary of defendant Highland Financial Partners, L.P. (a Delaware limited partnership) ("Highland Financial"). SOHC has six sister subsidiaries, all of which are owned in whole or in part by Highland Financial. Highland Capital serves as investment manager to defendant Highland Financial, SOHC and its sister subsidiaries.

25. Highland Financial is SOHC's alter ego. [redacted] For all purposes relevant to this action, Highland Financial and SOHC should be treated as a single entity and as alter egos of one another.

3. Defendant CDO Fund

26. Defendant Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") is a Bermuda exempted limited partnership, with its principal place of business at 52 Reid Street, Hamilton, Bermuda. Highland Capital controls CDO Fund's investment decisions through an investment management agreement. Between January 31, 2007 and August 31, 2008, Highland Capital's and its affiliates' aggregate ownership interest in CDO Fund ranged between 43.36% and 56.44%. Highland CDO Opportunity Fund, L.P. and Highland CDO Opportunity Fund, Ltd. serve as so-called "feeder funds" for defendant CDO Fund.

4. The Affiliated Transferee Defendants [redacted]

27. Defendant Highland Credit Strategies Master Fund, L.P. ("Credit Strategies") is a Bermuda limited partnership organized with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. Credit Strategies transacts business within New York, and derives substantial revenue from interstate and international commerce.

28. Defendant Highland Crusader Offshore Partners, L.P. (the "Crusader Fund") is a Bermuda limited partnership with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The Crusader Fund also has an office located at 13455 Noel Road, Suite 800, Dallas, Texas 75240. The Crusader Fund transacts business within New York, and derives substantial revenue from interstate and international commerce.

29. Defendant Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund") is a Delaware limited partnership with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240.

30. Credit Strategies, the Crusader Fund and the Credit Opp. Fund are referred to herein collectively as the "Affiliated Transferee Defendants" [redacted]

D. Non-Parties Affiliated With Highland Capital In Which The Fund Counterparties Invested

31. The Fund Counterparties held investments in several Highland Capital-affiliated funds, including Highland Credit Opportunities CDO, L.P., Highland Legacy, Highland Loan Funding V, Highland Park CDO I, Ltd., Highlander Euro CDO B.V. and Highlander Euro

CDO III B.V. Highland Capital served as the investment manager for these affiliated funds, and received valuable fees derived from the valuations of these funds' assets, which it managed.

JURISDICTION AND VENUE

32. Venue in this Court is proper under CPLR 503 because plaintiff UBSS has a principal place of business in New York County.

33. Venue is also proper under CPLR 501, and this Court may exercise jurisdiction over the Fund Counterparties because UBS, Highland Capital and the Fund Counterparties all agreed in writing, before this action was commenced, to submit to such jurisdiction and venue, in connection with any dispute that may arise out of, in connection with, or related to, the Agreements (defined below), or any of the matters contemplated thereby. This Court also may exercise jurisdiction over Highland Financial because it is the alter ego of SOHC.

34. This Court also may exercise jurisdiction over all defendants pursuant to CPLR 301 and 302(a)(1) and (3), because defendants regularly transact and solicit business in New York, committed tortious acts causing injury in New York, should reasonably have expected that their tortious acts would have consequences in New York, the effect of their wrongful conduct was felt in New York, and/or derive substantial revenue from interstate or international commerce. Additionally, Highland Capital has an office in New York and is a foreign limited partnership registered to do business in New York.

FACTUAL BACKGROUND

A. The Original Engagement

35. In or around April 2007, Highland Capital approached UBS for short-term financing in connection with a securitization that Highland Capital wanted to sponsor. UBS agreed to do so (the "Original Engagement").

36. On or about April 20, 2007, UBSS and Highland Capital entered into an engagement letter (the "Original Engagement Letter"), which contemplated that UBSS would act as the exclusive financial arranger and placement agent for a type of collateralized debt obligation transaction ("CDO"), known as a collateralized loan obligation ("CLO") squared or "CLO Squared" transaction. (A copy of the Original Engagement Letter is annexed hereto as Exhibit A.)

37. CLOs are a form of securitization where interest and principal payments on corporate loans made to multiple mid-sized and large businesses are pooled together by a lender or the owner of the loans, and then passed on through a securitization structure to investors. CLOs typically involve multi-million dollar loans known as syndicated loans, or leveraged loans made to new businesses or existing businesses, often to acquire other companies. The loan originators are able to spread risk through the CLO securitization, and simultaneously free up capital to make new loans to other businesses. The Original Engagement contemplated the securitization of CLO securities. Thus, the securitization contemplated by Highland Capital would have been a "CLO Squared" transaction.

38. On or about May 22, 2007, as contemplated by the Original Engagement Letter, UBSS and Highland Capital entered into a warehouse agreement (the "Original Cash Warehouse Agreement"). (A copy of the Original Cash Warehouse Agreement is annexed hereto as Exhibit B.) In accordance with the terms of the Original Engagement Letter and the Original Cash Warehouse Agreement, UBSS agreed to acquire securities as directed by Highland Capital. Highland Capital instructed UBS to acquire various CLO securities issued in connection with prior CLO transactions involving other sponsors and issuers (the "Cash Portfolio").

39. In a separate but related synthetic warehouse agreement (the "Original Synthetic Warehouse Agreement," and together with the "Original Cash Warehouse

Agreement," the "Original Warehouse Agreements"), UBS AG agreed to enter into credit default swaps (the "CDS Portfolio," and together with the Cash Portfolio, the "Warehouse Assets"), pursuant to which UBS AG sold credit protection to various third parties. (A copy of the Original Synthetic Warehouse Agreement is annexed hereto as Exhibit C.)

40. For Highland Capital's benefit, UBS held the Warehouse Assets on its balance sheet (the "Warehouse Facility"). UBS was expected to hold the Warehouse Assets until such time as the parties could arrange for the assets to be securitized as part of the contemplated securitization. In particular, if the parties believed that a securitization was economically feasible, they would create a special purpose entity that would acquire the Warehouse Assets from UBS using the proceeds from the sale of securities to investors. The special purpose entity's debt securities would be secured by those Warehouse Assets.

41. Under the Original Warehouse Agreements, if the Original Engagement terminated without a securitization, Highland Capital and the Fund Counterparties were obligated to pay UBS for losses on the Warehouse Assets. In particular, under the terms of the Original Cash Warehouse Agreement, Highland Capital was directly responsible for the first $50 million in losses in the Cash Portfolio, and under the terms of the Original Synthetic Warehouse Agreement, the Fund Counterparties were obligated to pay UBS for any and all losses suffered on the CDS Portfolio.

42. The Original Engagement Letter expired by its terms on August 15, 2007 without a securitization occurring. The Original Warehouse Agreements expired on the same date in accordance with their respective terms.

43. As of August 15, 2007, the Warehouse Assets in the Warehouse Facility had lost in excess of $86 million in value. Although they had sufficient capital to do so,

Highland Capital and the Fund Counterparties failed and refused to pay UBS what it was owed under the Original Warehouse Agreements.

44. As a result of extensive negotiations as well as representations and warranties made by Highland Capital on its own behalf, and on behalf of the Fund Counterparties as their investment manager, UBS agreed to restructure the terms of the Original Engagement.

B. Highland Capital And The Fund Counterparties Resort To Fraud To Avoid Highland Capital's Obligations To UBS

45. As alleged above, as a result of the termination of the Original Engagement, Highland Capital was directly liable to UBS under the Original Warehouse Agreement for in excess of $86 million.

46. Between August 2007 and March 14, 2008, UBS, Highland Capital and the Fund Counterparties had discussions and negotiations concerning a restructuring of the terms of the Original Engagement. Those negotiations resulted in agreements to restructure the Original Engagement (the "Restructured Transaction"), including a release by UBS of its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement. (The terms of the Restructured Transaction are set forth in the Engagement Letter and Warehouse Agreements described below (collectively, the "Agreements"), which are annexed hereto as Exhibits D, E and F, respectively.)

47. During the course of negotiations and before March 14, 2008, Highland Capital and Fund Counterparties made several material misrepresentations to UBS concerning the creditworthiness of the Fund Counterparties. Dondero, Highland Capital and the Fund Counterparties also failed to disclose to UBS information which would have been material to UBS's decision to enter the Restructured Transaction ("Omissions," as defined above). As

Highland Capital and the Fund Counterparties knew, UBS reasonably relied upon those material misrepresentations and, due to the Omissions, a misstated assessment of the Fund Counterparties, all to its detriment in deciding whether to enter the Restructured Transaction. UBS reasonably and justifiably relied on these misrepresentations and Omissions of facts and information that were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS reasonably believed that Highland Capital and the Fund Counterparties would not provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets as it in fact did.

48. For example, on or about December 28, 2007, to induce UBS to enter the Restructured Transaction and related Agreements, Gibran Mahmud of Highland Capital sent SOHC financial statements to UBS. On or about January 29, 2008, UBS requested additional financial information related to SOHC. Later that same day, to induce UBS to enter the Restructured Transaction and related Agreements, Phil Braner of Highland Capital emailed UBS a copy of SOHC's Statement of Financial Condition, dated December 31, 2007.

49. As described with more particularity below, the SOHC financial information that Highland Capital and the Fund Counterparties provided to UBS, which Highland Capital was responsible for preparing, was materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon SOHC's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

50. On or about February 4, 2008, Matt Killebrew of Highland Capital provided UBS with financial reports via email that reflected financial summaries, and aggregate

valuations for CDO Fund's assets as of December 31, 2007. On or about March 4, 2008, Mr. Killebrew sent UBS similar reports for the period ended January 31, 2008. As described with more particularity below, these financial reports, which Highland Capital prepared, also were materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon CDO Fund's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

51. The Fund Counterparties' financial statements [redacted] These facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties.

52. CDO Fund's financial statements [redacted]

[redacted]

53. Similarly, Highland Capital and the Fund Counterparties concealed from UBS the fact that the Fund Counterparties [redacted]

54. In addition, the Fund Counterparties' financial statements that Highland Capital and the Fund Counterparties provided to UBS in advance of the Restructured Transaction contained [redacted]

[redacted]

55. During the course of negotiations concerning the restructuring, UBS also insisted that the Fund Counterparties have the ability to post $70 million in cash and securities as collateral, which would be held at State Street Bank (the "Initial Restructured Transaction Collateral"), and in which UBS would hold a security interest. The Fund Counterparties' ability to do so using their own assets was qualitatively and quantitatively material to UBS. Among other things, it demonstrated the strength of their balance sheets, and by extension, their ability to satisfy future obligations to UBS.

56. Highland Capital and the Fund Counterparties agreed that the Fund Counterparties would post $70 million in Initial Restructuring Collateral. [redacted]

57. [redacted]

58. As the Fund Counterparties' investment manager, Highland Capital maintained the Fund Counterparties' accounting records, and knew Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe, and reasonably did not believe, that Highland Capital would provide it with false, incomplete or otherwise misleading information about

59. If UBS had known that the Fund Counterparties

[redacted] It also would have drawn into question the Fund Counterparties' liquidity. [redacted]

60. But for Dondero's, Highland Capital's and the Fund Counterparties' false and misleading statements and Omissions concerning the Fund Counterparties' finances and assets, and [redacted] UBS would not have entered into the Restructured Transaction or the Agreements that memorialized its terms. Given the Fund Counterparties' weak credit quality, additional adverse information about their collective or individual creditworthiness would have deterred UBS from going forward with the Restructured Transaction and putting more assets at risk. These misrepresentations and Omissions proximately caused harm to UBS.

61. UBS would not have entered into a transaction with parties that made misrepresentations as Highland Capital and the Fund Counterparties did. UBS also would not have agreed to release its valuable claims arising out of the Original Engagement under such circumstances. Because of, and in reliance on, the false and misleading information about the Fund Counterparties provided by Dondero, Highland Capital and the Fund Counterparties, UBS entered into the Restructured Transaction memorialized in the Agreements. Because each of the misrepresentations and Omissions identified above disguised the Fund Counterparties' inability to satisfy their obligations to UBS, the misrepresentations and Omissions proximately caused harm to UBS.

C. The Restructured Transaction Agreements

1. The Engagement Letter

62. On or about March 14, 2008, the parties reached agreement on the terms of a restructured engagement, which were memorialized in a new engagement letter (the "Engagement Letter," annexed hereto as Exhibit D). Pursuant to the Engagement Letter, Highland Capital re-engaged UBSS to act as placement agent in the event that market conditions improved, and the parties could go forward with securitizing the Warehouse Assets already held by UBS in the Warehouse Facility. UBS agreed to continue holding the Warehouse Assets in the Warehouse Facility, which had a notional value of approximately $818 million.

63. Under the terms of the Engagement Letter, UBS released claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

2. The Restructured Warehouse Agreements

64. On March 14, 2008, UBSS, the Fund Counterparties and Highland Capital also entered into a cash warehouse agreement (the "Cash Warehouse Agreement"), pursuant to which UBSS agreed to continue to hold the Cash Portfolio. (A true and correct copy of the Cash Warehouse Agreement is annexed hereto as Exhibit E.)

65. UBS AG, the Fund Counterparties and Highland Capital also entered into a synthetic warehouse agreement, dated as of March 14, 2008 (the "Synthetic Warehouse Agreement," and together with the Cash Warehouse Agreement, the "Warehouse Agreements"), pursuant to which UBS AG agreed to continue warehousing credit protection that it sold, i.e., the CDS Portfolio. (A true and correct copy of the Synthetic Warehouse Agreement is annexed hereto as Exhibit F.)

66. Section 13(B) of the Cash Warehouse Agreement and § 11(B) of the Synthetic Warehouse Agreement make Highland Capital liable for losses, including losses in the

Warehouse Facility, by reason of acts or omissions constituting bad faith, willful misconduct, or gross negligence.

67. Under § 12 of the Synthetic Warehouse Agreement, the Fund Counterparties agreed to transfer to State Street the Initial Restructuring Collateral to partially secure their respective obligations to UBS under the Warehouse Agreements. Annex C to the Synthetic Warehouse Agreement identified the six assets that the Fund Counterparties purportedly transferred to State Street to satisfy their Initial Restructuring Collateral obligations, along with $20 million in cash.

68. The Warehouse Agreements also contained releases whereby UBS agreed to release claims it had against Highland Capital and the Fund Counterparties for losses arising out of the Original Engagement.

D. Highland Capital Uses Its Control Over The Fund Counterparties To Dissipate Their Assets Without Regard For The Fund Counterparties' Growing Obligations To UBS

69. Almost immediately after the Restructured Transaction Agreements were executed, Highland Capital and the Fund Counterparties knowingly began to dissipate the Fund Counterparties' assets and make it impossible for the Fund Counterparties to ever repay UBS what they owed. Highland Capital and the Fund Counterparties did so at various times when the Fund Counterparties owed UBS hundreds of millions of dollars.

70. For example, on or about March 26, 2008, just days after entering the Restructured Transaction, Highland Capital caused certain SOHC assets to be encumbered by entering into a transaction with Barclays Bank, plc. ("Barclays"). At or around the same time, CDO Fund was negotiating financing arrangements with Morgan Stanley & Co. International Ltd. and Highland Capital IV SPC, whereby it granted a security interest in its assets to those entities. By granting a security interest in the Fund Counterparties' assets to other creditors,

Highland Capital unfairly and improperly reduced the assets available to satisfy the Fund Counterparties' obligations to UBS in bad faith and in violation of UBS's rights.

71. Similarly, on or about April 2, 2008, Highland Capital advised UBS that defendant CDO Fund had recently monetized a $129 million long position in SunCom Wireless. When Highland Capital and CDO Fund subsequently provided UBS with additional financial information about CDO Fund, however, UBS discovered that Highland Capital had caused CDO Fund to transfer approximately $100 million of the cash proceeds from the SunCom Wireless sale out of CDO Fund.

72. By improperly removing such a substantial amount of cash from CDO Fund, Highland Capital interfered in bad faith with CDO Fund's ability to satisfy its steadily increasing financial obligations to UBS. In particular, in or around May 2008, when the cash proceeds from the SunCom Wireless position were siphoned off, the Fund Counterparties owed UBS in excess of $166 million related to losses in the Warehouse Facility, approximately 50% of which CDO Fund was obligated to pay.

73. Highland Capital also repeatedly caused SOHC's cash to be transferred by defendant Highland Financial. In particular, during the first five months of 2008, SOHC's cash position was reduced by over $10 million at a time when its obligations to UBS were increasing substantially.

E. In the Fall of 2008, Losses Mount And The Fund Counterparties Face Collateral Calls From Creditors Including UBS That They Cannot Meet Despite Highland Capital's Belated Efforts To Do So [redacted]

74. Under the terms of the Warehouse Agreements, the Fund Counterparties were required to post additional collateral with UBS if the combined market value of (a) the

Warehouse Assets and (b) the Initial Restructured Transaction Collateral, declined below a certain amount.

75. By September 2008, losses in the Warehouse Facility had increased significantly. At the same time, the value of the Initial Restructuring Collateral had declined substantially, as had the value of the assets held by the Fund Counterparties.

76. Highland Capital was desperate to avoid a default by any of its affiliates, including the Fund Counterparties. If a Highland Capital affiliate defaulted on its obligations to a creditor, Highland Capital's reputation in the investment community would be damaged, and there was a risk that Highland Capital's business would collapse. Highland Capital feared that a public default would lead investors in Highland Capital's hedge fund family to withdraw their capital, and lead creditors to take aggressive actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights.

1. The First Margin Call

77. On or about September 16, 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Specifically, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties were each required to post $10 million in cash or equivalent securities (the "First Margin Call").

78. Because Highland Capital had routinely drained cash from the Fund Counterparties, the Fund Counterparties lacked the liquidity to meet UBS's demands using their own assets.

79. On or about September 19, 2008, the Fund Counterparties satisfied the First Margin Call by together posting $20 million in cash as additional collateral. [redacted]

[redacted]

2. UBS Is Harmed By Highland Capital's Response To The Fund Counterparties' Liquidity Crisis

80. In the wake of the First Margin Call, the Fund Counterparties remained starved for liquidity. Still desperate to avoid defaults to creditors and the consequences described above, Highland Capital resorted to [redacted]

81. Highland Capital and the individuals that directed the Fund Counterparties knew that they had caused the Fund Counterparties to become incapable of satisfying their obligations to all of their respective creditors when they came due, and that they were insolvent or, at the very least, within the zone of insolvency.

82. For example, on or about September 26, 2008, Dondero and Highland Capital improperly [redacted]

[redacted]

83. [redacted]

84. [redacted]

85. [redacted]

[redacted]

86. [redacted] Highland Capital executed this plan at UBS's expense to protect their substantial personal stake in Highland Financial and prevent negative publicity associated with defaulting [redacted]. Implementing this plan, however, caused SOHC (and its alter ego, Highland Financial) to improperly and in bad faith breach duties and obligations to UBS.

87. [redacted] SOHC's expected obligations to UBS were well in excess of $250 million, which were due and owing to UBS no later than March 14, 2009. Thus, by [redacted], Highland Capital and the Fund Counterparties made a fraudulent conveyance and interfered in bad faith with the Fund Counterparties' ability to meet their contractual obligations to UBS.

88. Given the state of the financial markets at the time, Highland Capital, Highland Financial and SOHC had no expectation that SOHC would be able to satisfy its

obligations to UBS when they came due. [redacted]

89. [redacted]

3. The Second Margin Call

90. On or about October 21, 2008, UBS notified Highland Capital that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties each owed another $10 million (the "Second Margin Call").

91. In response to the Second Margin Call, Highland Capital offered UBS numerous assets as collateral. UBS rejected those offers for various business-related reasons. As UBS would later learn, however, at the time Highland Capital was offering the assets to UBS, the Fund Counterparties did not own them.

92. On or about October 24, 2008, the Fund Counterparties satisfied the Second Margin Call by together posting assets with a notional value of $49.97 million (but a market value of approximately $20 million), with the understanding that UBS would authorize State Street to return the securities if and when the Fund Counterparties were able to replace

those securities with $20 million in cash. As UBS would later learn, [redacted]

93. Moreover, at the same time that Highland Capital was telling UBS that the Fund Counterparties did not have sufficient cash assets to meet the Second Margin call, [redacted]

4. The Third Margin Call

94. On or about November 7, 2008, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties had an obligation to post another $10 million as collateral (the "Third Margin Call").

95. On or about November 11, 2008, Highland Capital and the Fund Counterparties offered to post various securities to satisfy the Third Margin Call. In response to the Third Margin Call, Phil Braner of Highland Capital emailed UBS a list of proposed collateral including eight securities with a purported market value of approximately $20 million (i.e., twice the amount of cash due to satisfy the Third Margin Call).

96. Pursuant to the Warehouse Agreements, UBS was authorized to reject proposed collateral. UBS determined that the proposed additional collateral offered by Highland Capital and the Fund Counterparties was unacceptable. On or after November 13, 2008, UBS formally rejected the offered securities, and requested that the Fund Counterparties provide cash

or cash equivalent collateral to satisfy their obligations under § 12(C) of the Synthetic Warehouse Agreement.

97. UBS would later learn that [redacted]

98. When UBS confronted Highland Capital about this issue Mr. Braner of Highland Capital explained that [redacted]

F. Termination Of The Agreements And Demand For Payment Of Losses

99. As of December 3, 2008, the Fund Counterparties still had not met the Third Margin Call in accordance with § 12(C) of the Synthetic Warehouse Agreement. This failure resulted in UBS's declaration of a termination date ("Termination Date") under the Agreements.

100. On December 3, 2008, UBS delivered a letter (the "Termination Date Letter") to Highland Capital and the Fund Counterparties notifying them of such failure and the

occurrence of a Termination Date under each Agreement. (A true and correct copy of the Termination Date Letter is annexed hereto as Exhibit G.)

101. Sections 5 and 7 of the Cash Warehouse Agreement provided that if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, UBSS could, in its sole discretion, retain any of the securities in the Warehouse Facility or sell such securities to one of UBSS's affiliates or an unaffiliated party.

102. Pursuant to the terms of the Agreements, if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, each of the Fund Counterparties was obligated to pay to UBS its pro rata share of any market value losses on the Warehouse Assets, which UBS determined it had experienced and so notified Highland Capital and the Fund Counterparties.

103. On December 19, 2008, UBSS delivered a letter (the "Cash Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Cash Warehouse Demand Letter is annexed hereto as Exhibit H.) UBSS demanded that Highland Capital and the Fund Counterparties wire that required amount to UBSS no later than 5:00 pm on December 24, 2008 (i.e., the third business day after the date of the Cash Warehouse Demand Letter) (the "Final Payment Date"). Highland Capital and the Fund Counterparties failed to make the required payment to UBSS.

104. The Synthetic Warehouse Agreement provided that in the event the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, the Fund Counterparties would be collectively responsible for 100% of the aggregate amount of losses on the CDS Portfolio and each of the Fund Counterparties would pay, after notice of such amount due from UBS, its pro rata share of such amount to UBS within three business days.

105. On December 19, 2008, UBS AG delivered a letter (the "Synthetic Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Synthetic Warehouse Demand Letter is annexed hereto as Exhibit I.) UBS AG demanded that the Highland Capital and the Fund Counterparties wire the required amount to UBS AG no later than 5:00 PM on the Final Payment Date (i.e., December 24, 2008 — the third business day after the date of the Synthetic Warehouse Demand Letter). Highland Capital and the Fund Counterparties failed to make the required payment to UBS AG.

G. Notice Of Failure to Pay, Auction And Final Accounting Letter

106. On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to make the requisite payments when due pursuant to the Agreements and the applicable demand letters. On or about January 16, 2009, in connection with unwinding the Warehouse Facility, UBS conducted the auction contemplated by the Warehouse Agreements.

107. On or about March 19, 2009, UBS delivered a letter to Highland Capital and the Fund Counterparties concerning a final accounting concerning the auction and the losses in the Warehouse Facility. UBS determined that Highland Capital and the Fund Counterparties owed it $686,853,290.26.

H. Highland Capital [redacted]

108. [redacted]

109. In December 2008, immediately after UBS terminated the Restructured Transaction, Dondero and Highland Capital [redacted]

110. On or about February 24, 2009, UBS commenced this action against Highland Capital and the Fund Counterparties. At the time, SOHC and Highland Financial, as its alter ego, owed UBS approximately $345 million.

111. Undeterred, on or about March 17, 2009, Dondero and Highland Capital [redacted]

- [redacted]

- [redacted]
- [redacted]

112. As a result, Highland Capital (a) further interfered in bad faith with UBS's contractual rights and the Fund Counterparties' contractual obligations under the Warehouse Agreements, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements; and (b) [redacted]

113. [redacted] The full extent of UBS's injury should be determined at trial.

114. [redacted]

[redacted]

FIRST CAUSE OF ACTION
(Fraud Against The Fund Counterparties)

115. UBS repeats and realleges the allegations set forth in paragraphs 1 through 114 of this Second Amended Complaint as if fully set forth herein.

116. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

117. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

118. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties as well as information about their finances and assets, including, but not limited to, information regarding the following:

(a) [redacted]

(b) [redacted]

(c) [redacted]

119. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

120. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances and assets when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

121. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

122. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances and assets. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Fund Counterparties to complete or clarify the information that it provided to UBS concerning

the Fund Counterparties' finances and assets. Consequently, Highland Capital's and the Fund Counterparties' concealment of the Fund Counterparties' finances and assets was fraudulent.

123. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition and assets. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances and assets. UBS also had no reason to believe that the financial information that Highland Capital provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008, [redacted]

124. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

125. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

126. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of $686 million in losses that the Fund Counterparties cannot pay to UBS.

127. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Fraud Against The Fund Counterparties)
(Pled Solely To Preserve For Appeal)

128. UBS repeats and realleges the allegations set forth in paragraphs 1 through 127 of this Second Amended Complaint as if fully set forth herein.

129. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

130. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

131. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties and information about their finances, assets and business practices, including, but not limited to, information regarding the following:

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

(e) [redacted]

(f) [redacted]

(g) [redacted]

132. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

133. These Omissions rendered the Fund Counterparties' representations, statements and financial statements materially misleading. Because Highland Capital and the Fund Counterparties concealed this information from UBS, UBS could not properly evaluate SOHC's ability to satisfy its obligations to UBS. For instance, UBS received financial reports from Highland Capital for the Fund Counterparties that suggested that the Fund Counterparties held hundreds of millions of dollars worth of assets that could be used to satisfy their obligations to UBS. However, a substantial portion of the assets that UBS reasonably believed would be available, were, in fact, not going to be available to pay UBS because they were going to be encumbered as a result of other transactions. In other words, because Highland Capital concealed its intentions, the financial reports that it provided to UBS were misleading as they provided UBS with false and illusory comfort regarding the Fund Counterparties' capacity to fulfill their contractual obligations to UBS. As the Fund Counterparties' investment manager, Highland Capital would have led the negotiations related to the other financing arrangements.

134. Similarly, during negotiations concerning the Initial Restructuring Collateral, Highland Capital and SOHC made an additional Omission by not disclosing to UBS

the fact that SOHC had a serious liquidity problem. SOHC had to borrow cash from Highland Capital to satisfy the cash portion of its Initial Restructuring Collateral obligation. On or about December 18, 2007, while the parties were negotiating the restructuring, Highland Capital loaned $30 million to SOHC, which Highland Capital and SOHC's alter ego, Highland Financial, earmarked for SOHC to use as collateral in connection with negotiating extensions of warehouse facilities, including the one with UBS. As Highland Financial's and SOHC's investment manager, Highland Capital knew about SOHC's liquidity problems since they were discussed openly at Highland Financial board meetings attended by Highland Capital. The failure to fully disclose SOHC's liquidity problem, and its inability to meet the Initial Restructuring Collateral obligation using its own cash assets was an Omission, because it was indicative of the strength of SOHC's finances and assets, and SOHC's ability to satisfy obligations to UBS.

135. Highland Capital and Fund Counterparties also concealed from UBS that Highland Capital had to commingle assets among its various affiliates and disregard corporate formalities to satisfy the Fund Counterparties' liquidity needs. Facts and information concerning these business practices, including Highland Capital's commingling of assets and disregard of corporate formalities was information solely and peculiarly within the knowledge of Highland Capital and its affiliates. As the investment manager to Highland Financial, SOHC and CDO Fund (as well as the Affiliated Transferee Defendants), Highland Capital knowingly arranged and caused the asset transfers between and among the various affiliates in disregard of corporate formalities.

136. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and

qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances, assets and business practices when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

137. In addition, if UBS had known that Highland Capital and the Fund Counterparties ignored corporate formalities or that Highland Capital freely transferred assets among its controlled entities, UBS would not have entered the Restructured Transaction. These misrepresentations and Omissions proximately caused harm to UBS.

138. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital and the Fund Counterparties provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

139. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances, assets and business practices. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Highland Entities to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances, assets and business practices. Consequently, Highland Capital's and the Fund Counterparties' concealment about the Fund Counterparties' finances, assets and business practices was fraudulent.

140. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund

Counterparties' financial condition, assets and business practices. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances, assets and business practices. UBS also had no reason to believe that the financial information that Highland Capital and the Fund Counterparties provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008, [redacted]

141. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

142. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole

for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

143. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of $686 million in losses that the Fund Counterparties cannot pay to UBS.

144. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of Contract Under the Cash Warehouse Agreement Against The Fund Counterparties)

145. Plaintiff UBSS repeats and realleges the allegations set forth in paragraphs 1 through 144 of this Second Amended Complaint as if fully set forth herein.

146. The Cash Warehouse Agreement is a valid and binding contract.

147. UBSS has performed all of its obligations under the Cash Warehouse Agreement.

148. Pursuant to the Cash Warehouse Agreement, each of the Fund Counterparties was required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the required transfer. The Fund Counterparties' failure to make such transfer is a breach under the Cash Warehouse Agreement, and resulted in a Termination Date under the Cash Warehouse Agreement.

149. In accordance with the terms of the Cash Warehouse Agreement, UBSS demanded that each of the Fund Counterparties pay to UBS their respective pro rata shares of the amount of losses on the Cash Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Cash Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBSS. The failure to pay these amounts to UBSS when due under the Cash Warehouse Agreement constituted a further breach under the Cash Warehouse Agreement.

150. By reason of the foregoing, UBSS has suffered and will continue to suffer damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Breach of Contract Under the Synthetic Warehouse Agreement Against The Fund Counterparties)

151. Plaintiff UBS AG, repeats and realleges the allegations set forth in paragraphs 1 through 150 of this Second Amended Complaint as if fully set forth herein.

152. The Synthetic Warehouse Agreement is a valid and binding contract.

153. UBS AG has performed all of its obligations under the Synthetic Warehouse Agreement.

154. Pursuant to the Synthetic Warehouse Agreement, each of the Fund Counterparties were required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the requisite transfer. The failure to make such transfer resulted in a breach and a Termination Date under the Synthetic Warehouse Agreement.

155. UBS AG demanded that each of the Fund Counterparties pay to UBS AG their pro rata share of losses on the CDS Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Synthetic Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBS. The failure to pay these amounts when due under the Agreements was a further breach under the Synthetic Warehouse Agreement.

156. By reason of the foregoing, UBS AG has suffered and will continue to suffer damages in an amount to be determined at trial.

157. Paragraphs 157 to 166 have been intentionally left blank.

FIFTH CAUSE OF ACTION
(Fraudulent Conveyances Against All Defendants)

167. UBS repeats and realleges the allegations set forth in paragraphs 1 through 166 of this Second Amended Complaint as if fully set forth herein.

168. Between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties and caused the Fund Counterparties to transfer valuable cash and assets out of the Fund Counterparties, thereby impairing their ability to bear losses in the Warehouse Facility, and otherwise satisfy their obligations to creditors, including UBS. [redacted]

169. [redacted]

170. [redacted]

171. [redacted]

172. [redacted]

173. [redacted]

[redacted]

174. [redacted]

175. [redacted]

176. [redacted]

177. [redacted]

178. [redacted]

179. As a result of the foregoing fraudulent conveyances, the Fund Counterparties were unable to satisfy their obligations to UBS. As a result of the foregoing fraudulent conveyances, UBS has been harmed in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Tortious Interference With Contractual Relations Against The Affiliated Transferee Defendants)
(Pled Solely To Preserve For Appeal)

180. UBS repeats and realleges the allegations set forth in paragraphs 1 through 179 of this Second Amended Complaint as if fully set forth herein.

181. The Agreements are valid and binding contracts.

182. The parties agreed that UBS would not bear the risk of any losses in connection with the Restructured Transaction. As a direct result of the Fund Counterparties' breach of the Warehouse Agreements, UBS suffered no less than $686,853,290.26 in damages. Under the terms of the Warehouse Agreements, the Fund Counterparties' obligation to pay UBS for losses in the Warehouse Facility expressly survived the termination of the Agreements.

183. Highland Capital knew of the Agreements, and were familiar with their terms, including the Fund Counterparties' obligations to UBS thereunder. The Affiliated

Transferee Defendants, also knew of the Agreements, and their terms, including the Fund Counterparties' obligations to UBS thereunder.

184. Highland Capital and the Affiliated Transferee Defendants intentionally and improperly caused and ensured a breach of the Warehouse Agreements by the Fund Counterparties, thereby tortiously interfering with UBS's rights under the Agreements.

185. Specifically, in 2008 and 2009 Highland Capital wrongfully caused the improper and fraudulent asset transfers, payments, distributions and dividends described above, and thereby tortiously interfered with UBS's contractual relationship with the Fund Counterparties by knowingly impairing UBS's contractual right under the Warehouse Agreements to be reimbursed by the Fund Counterparties for the losses on the Warehouse Assets. For example, Highland Capital wrongfully caused the March 2009 Fraudulent Conveyance for which there was no legitimate purpose. The Affiliated Transferee Defendants [redacted]

186. Highland Capital and the Affiliated Transferee Defendants [redacted]

187. Highland Capital and the Affiliated Transferee Defendants engaged in the foregoing unlawful and improper conduct, and tortiously interfered with UBS's contractual rights under the Warehouse Agreements, for their own improper personal gain by knowingly violating UBS's rights and making it impossible for the Fund Counterparties to perform under the Warehouse Agreements. In particular, the foregoing conduct constitutes independent torts

and predatory acts directed at UBS for Highland Capital's and the Affiliated Transferee Defendants' own personal gain.

188. As a direct and proximate result of Highland Capital's and the Affiliated Transferee Defendants' tortious interference with UBS's contractual rights under the Agreements, UBS has suffered damages in an amount to be determined at trial. Had Highland Capital and the Affiliated Transferee Defendants not tortiously interfered with UBS's contractual rights, the Fund Counterparties would have been able to make payments to UBS of the amount they owed to UBS under the Warehouse Agreements.

SEVENTH CAUSE OF ACTION
(Declaratory Judgment For General Partner Liability Against Strand)

189. UBS repeats and realleges the allegations set forth in paragraphs 1 through 188 of this Second Amended Complaint as if fully set forth herein.

190. A limited partnership's general partner is personally liable for the partnership obligations of the limited partnership.

191. Highland Capital is a Delaware limited partnership. Defendant Strand is Highland Capital's general partner. As such, Strand is personally liable for the liability, debts and obligations of Highland Capital, including but not limited to Highland Capital's liabilities to UBS arising out of the Consolidated Action.

192. A justiciable controversy exists as to whether Strand is liable to UBS for the injuries caused by Highland Capital complained of in the Consolidated Action as a result of Strand being Highland Capital's general partner.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment For Alter Ego Liability Against Highland Financial)

193. UBS repeats and realleges the allegations set forth in paragraphs 1 through 192 of this Second Amended Complaint as if fully set forth herein.

194. As alleged above, SOHC breached the Warehouse Agreements and otherwise harmed UBS by engaging in fraudulent misconduct. Highland Financial is SOHC's alter ego and should be held responsible and liable for SOHC's breach of the Warehouse Agreements and fraudulent misconduct.

195. SOHC is a mere instrumentality of Highland Financial. SOHC had no independence and could not exercise any business discretion whatsoever. [redacted] SOHC did not have its own offices, officers or employees. Rather, it shared common officers, directors and employees, as well as common office space, with Highland Financial.

196. As alleged in detail above, Highland Financial completely dominated the day-to-day operations of SOHC as well as SOHC's sister-affiliates. In particular, Highland Financial operated Highland Financial and its subsidiaries, including SOHC, as a single entity, [redacted]

[redacted]

197. A justiciable controversy exists as to whether Highland Financial is liable to UBS as SOHC's alter ego for the losses and harm that UBS suffered that were caused by SOHC's breach of the Warehouse Agreements, and the fraudulent and tortious conduct complained of herein.

RELIEF DEMANDED

WHEREFORE, plaintiffs UBSS and UBS AG demand judgment:

(a) On the first cause of action, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than $686,853,290.26;

(b) On the second cause of action, which is pled solely to preserve UBS's appellate rights, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than $686,853,290.26;

(c) On the third cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Cash Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(d) On the fourth cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Synthetic Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(e) On the fifth cause of action, as against all defendants, (i) declaring that the dispositions of the Fund Counterparties' and Highland Financial's assets, as directed by Highland Capital, constituted fraudulent conveyances; (ii) appointing a receiver over defendants; (iii) directing that a full accounting be had of defendants' affairs and finances; (iv) imposing a constructive trust over defendants' assets until such an accounting is completed; and/or (v) awarding UBS damages in an amount to be determined at trial, but no less than the value of the assets fraudulently and improperly transferred, or, alternatively, directing that defendants and their partners, members or shareholders return to the Fund Counterparties any assets or consideration received from Highland Financial or the Fund Counterparties, directly or indirectly, as distributions, dividends, consideration, compensation, fees, interest, principal or otherwise, between March 14, 2008 and the present.

(f) On the sixth cause of action, as against the Affiliated Transferee Defendants, which is pled solely to preserve UBS's appellate rights, declaring that each of those defendants is liable for tortiously interfering with UBS's contractual rights under the Warehouse Agreements, and awarding UBS an amount to be determined at trial;

(g) On the seventh cause of action, as against defendant Strand, declaring that Strand is responsible for Highland Capital's liability and obligations arising out of the Consolidated Action;

(h) On the eighth cause of action, as against defendant Highland Financial, declaring that Highland Financial is SOHC's alter ego, and that as such, Highland Financial is responsible for SOHC's liability and obligations to UBS arising out of this action;

(i) Awarding UBS punitive damages in an amount to be determined at trial;

(j) Granting UBS its costs and disbursements, including reasonable attorneys' fees and expenses of this action;

(k) Granting UBS pre-judgment interest; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 11, 2011

CADWALADER, WICKERSHAM & TAFT LLP

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Exhibit B

Phase I Decision and Order

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

----------X

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS, INC.,

Defendant.

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INDEX NO. 650097/2009

DECISION AND ORDER AFTER TRIAL

This action arises out of a failed restructured transaction between plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, UBS) and defendants Highland CDO Opportunity Master Fund, L.P. (CDO Fund) and Highland Special Opportunities Holding Company (SOHC) (together, the Fund Counterparties), and defendant Highland Capital Management, L.P. (Highland Capital) (together with the Fund Counterparties, Highland), for the securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs).

The court conducted a bench trial from July 9 through July 27, 2018 on plaintiffs' third and fourth causes of action in the second amended complaint for breach of contract, and on defendant Highland Capital's first and second counterclaims against plaintiff UBS Securities

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

LLC for breach of contract and unjust enrichment, respectively.[1] Based on the credible evidence at trial, the court now makes the following determination as to the breach of contract causes of action and counterclaims.[2]

In April and May 2007, the parties agreed to pursue a collateralized debt obligations transaction governed by an Engagement Letter, a Synthetic Warehouse Agreement for CDSs, and a Warehouse Agreement for CLOs (Original Agreements). (DX 4, DX 5, DX 6.)[3] It is undisputed that UBS acted as the "financial arranger" for the transaction and was responsible for financing the acquisition of assets, which would then be held in portfolios, which the parties refer to as the Cash Warehouse and the Synthetic Warehouse or collectively as the Knox Warehouse. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 5.)[4] Highland Capital acted as the "Servicer" and was responsible for identifying the specific CLOs to be securitized and the Reference Obligations for the CDSs to be securitized. (Ps.'s Findings, ¶¶ 3, 4; Ds.'s Findings, ¶¶ 6, 8.)

In furtherance of the transaction, UBS acquired assets with a notional value of $818 million. (Ps.'s Findings, ¶ 6; Ds.'s Findings, ¶ 5.) There were 33 CLO tranches in the Cash Warehouse, with a notional value of $174 million. UBS paid $170 or $170.5 million to acquire the CLOs because the bonds were purchased at a slight discount on their par value. (Ds.' Findings, ¶ 6; Ps.'s Findings, ¶ 6.) The Synthetic Warehouse contained 87 credit default swaps,

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[1] By decision on the record on May 1, 2018 (NYSCEF Doc. No. 494), the court bifurcated the trial. The decision held that the breach of contract claims, which were to be heard by the court, would be determined prior to claims, including fraudulent conveyance claims, which were to be heard by a jury.

[2] At the trial, the parties agreed to the submission of extensive evidence, subject to standing objections. This decision is not based on such evidence, unless the decision expressly states otherwise.

[3] Defendants' and plaintiffs' trial exhibits will be referred to as DX _ and PX _, respectively. The parties' demonstrative exhibits will be referred to as DX Demo. _ and PX Demo. _

[4] The Fund Counterparties' and Highland Capital Management, L.P.'s Proposed Findings of Fact and Conclusions of Law will be referred to as Ds.'s Findings. Plaintiffs' Proposed Findings of Fact and Conclusions of Law will be referred to as Ps.'s Findings. Defendants' Findings are all identified by paragraph number. Plaintiffs' Findings of Fact are identified by paragraph number, while their Findings of Law are identified only by page number.

with a notional value of $644 million. (Ds.'s Findings, ¶ 7; Ps.'s Findings, ¶ 6.). UBS served as the protection seller on all of the CDSs. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 8.) For five of the CDSs, with a notional value of $45 million, Lehman Brothers Special Financing, Inc. (Lehman) acted as the protection buyer (Lehman Swaps). (Ps.'s Findings, ¶ 8; Ds.'s Findings, ¶ 9; PX 755[5], at 1.) For 20 of the CDSs, with a notional value of $124 million, UBS acted as both protection seller and protection buyer (the Internal Swaps). (Ds.'s Findings, ¶ 10; Ps.'s Findings, ¶ 9; PX 755, at 4-5.)

The Original Agreements expired by their terms on August 15, 2007. (PX 1, at 1.) The parties agreed to restructure the transaction, signing a new Engagement Letter, the 2008 Cash Warehouse Agreement (CWA), and the 2008 Synthetic Warehouse Agreement (SWA), as of March 14, 2008. (See PX 1, PX 2, PX 3.) As of March 14, 2008, the Knox assets had lost significant value and the parties agreed that, given the market conditions existing as of the date of the restructured transaction, it was not then feasible to sell the securities and close the transaction. (Ps.'s Findings, ¶ 20; 2008 Engagement Letter [PX 1, at 8].)

As discussed further below, the Synthetic Warehouse Agreement provided for the roll-over of the Existing Credit Default Swaps and the Existing Collateral Portfolio into the warehouses created under the 2008 restructured transaction. (See SWA, Whereas Clause 5.) Section 12 of the Synthetic Warehouse Agreement provided that the Fund Counterparties would transfer additional cash and securities "to secure its obligations to UBS" under the SWA and the CWA. In particular, this Section required the Fund Counterparties to make an Initial Deposit of $20 million in cash and approximately $54 million in Eligible Securities on the date of the

[5] PX 755 is a document that that was jointly prepared by plaintiffs' and defendants' counsel so that specific information regarding the Knox Warehouse assets could be found in one place. (Trial Tr. at 858.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

execution of the SWA. (Id., § 12 [A].) The SWA contained a collateral call provision under which UBS was required to track its CDS and Cash Exposure to losses, as defined under the Agreement, on a semi-monthly basis, and the Fund Counterparties were required to deposit an additional $10 million in collateral (cash and/or Eligible Securities) for every $100 million increase in the defined Deposit Threshold Exposure Amount. (Id., §§ 12 [B], [C].)

It is undisputed that, pursuant to Section 12 (C) of the SWA, UBS made a first collateral call for $10 million on September 17, 2008 (PX 4), and a second collateral call for $10 million on October 21, 2008 (PX 5), both of which were satisfied by the Fund Counterparties. (Testimony of Keith Grimaldi, Former Head of UBS's CDO Secondary Trading Desk, Trial Transcript (Tr.) at 81, 112, 119.)

On November 7, 2008, UBS issued the third, and final, collateral call to the Fund Counterparties for an additional $10 million. (PX 6.) It is undisputed that the Fund Counterparties did not meet this collateral call. (Ds.'s Findings, ¶ 17; Ps.'s Findings, ¶¶ 43-47).[6]

On December 3, 2008, UBS sent a notice to Highland stating that, to date, no deposits have been made in response to the November collateral call, and that "a Termination Date has occurred under the Warehouse Agreements and a termination date has occurred under the Engagement Letter." (PX 7; PX 9.) The notice further stated that "UBS is forbearing from exercising its remedies [under the Agreements] for a period of two Business Days from the date hereof in order to permit [the Fund Counterparties] to pay the Additional Deposits by 5 pm New York time on December 5, 2008." (Id.) On December 5, 2008, UBS sent an additional notice to

[6] It is undisputed that the Fund Counterparties offered to post CLO assets to satisfy the third collateral call and that UBS did not accept that collateral. UBS's Keith Grimaldi testified that UBS rejected the CLOs because "at that time the marketplace was declining and declining rapidly. We thought there would be more declines, so we collectively made a decision that we wanted cash or government securities ... that would be easily liquid and reflect better value." (Trial Tr. at 122.) Defendants stipulated that UBS had the right to insist on cash. (See Statement of Andrew Cruciani [Ds.'s Atty.], Trial Tr. at 1736.)

Highland stating that the Additional Deposit has not been made, and that "[c]onsequently, UBS will proceed to exercise the rights and remedies available to it under the Warehouse Agreements, the Engagement Letter, at law and otherwise." (PX 8.)

THIRD COLLATERAL CALL

As a threshold matter, the parties dispute whether the third collateral call was proper. Highland argues that UBS should not have included the 20 Internal Swaps in calculating the Deposit Threshold Exposure Amount "because the Intradesk [i.e., Internal] Swaps were not Existing Credit Default Swaps under the SWA . . . ." (Ds.'s Findings, ¶ 28.) Highland also claims that the Lehman Swaps were not properly included in the calculation because they had been terminated prior to the third collateral call. (See id., ¶ 27.)

More particularly, Highland claims that the Internal Swaps were not Existing Credit Default Swaps because they were not documented, as allegedly required by Section 3 of the SWA, in the form of an ISDA Master Agreement and ISDA Confirmation. (Ds.'s Findings, ¶¶ 28, 30-31.) UBS does not dispute that the Internal Swaps were not documented by the ISDA Master Agreement and Confirmation, but argues that Section 3 does not require such documentation for the Internal Swaps. (Ps.'s Findings, at 24-25.)[7]

Resolution of this dispute involves an issue of contract interpretation. It is well settled that the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace v 600 Partners Co., 86 NY2d 543, 548 [1995]; W.W.W. Assocs., Inc. v Giancontieri, 77 NY2d 157, 162 [1990].) Written agreements are to be construed in accordance with the parties' intent, and "the best evidence of what parties to a written agreement

[7] It is undisputed that the Internal Swaps were documented by electronic trading tickets but not by ISDA Master Agreements or ISDA trade confirmations. (Ds.'s Findings,¶ 10; Ps.'s Findings,¶¶ 16-17; PX 29 [electronic trading tickets].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

intend is what they say in their writing." (Schron v Troutman Sanders LLP, 20 NY3d 430, 436 [2013] [internal quotation marks, brackets, and citation omitted].) The court should determine from contractual language, without regard to extrinsic evidence, whether there is any ambiguity. (Chimart Assocs. v Paul, 66 NY2d 570, 573 [1986].) Extrinsic or parol evidence "may not be considered when the intent of the parties can be gleaned from the face of the instrument." (Id. at 572-573.) "Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous. . . ." (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002].) "Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties' intent, or where its terms are subject to more than one reasonable interpretation." (Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 25 NY3d 675, 680 [2015] [internal quotation marks and citation omitted].)

It is also well settled that a court should "construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose." (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; National Conversion Corp. v Cedar Bldg. Corp., 23 NY2d 621, 625 [1969] [holding that "[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency"].)

Applying these precepts, the court holds that the SWA is not ambiguous with respect to the requirements for documentation of CDSs, that Section 3 of the SWA only applies to CDSs in which a third party is the protection buyer, and that this Section does not require ISDA documentation for the Internal Swaps.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

The SWA defines "Existing Credit Default Swap[s]" as the CDSs "that were the subject of the Original Synthetic Warehouse Agreement." (SWA, Whereas Clause 5.) Section 3 of the SWA provides, in pertinent part:

> "Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation. . . . Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached [to the SWA] . . . ."

As the Agreement that governs the securitization of Existing and Additional Credit Default Swaps, the SWA contains numerous detailed provisions regarding the accumulation and disposition of these financial instruments. Section 3, which pertains to documentation of the swaps, is the only provision in the SWA that is limited to CDSs in which UBS is the Seller and a counterparty is the Buyer. All of the other provisions of the SWA refer to CDSs without such limitation.

Moreover, like SWA Section 3, the Original SWA provided: "Each Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the counterparty, which documents are confidential between UBS and each counterparty and (ii) the Confirmation attached hereto. . . ." (Original SWA, § 3 [NYSCEF Doc. No. 626].) It is undisputed, however, that the Internal Swaps were included in the Original SWA portfolio but were not documented by the ISDA Master Agreement or Confirmation. It is also undisputed that the Internal Swaps were nevertheless again included in the Initial Net Exposure Amount in the SWA for the restructured transaction. (Testimony of Peter Vinella [Highland's expert in

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

structured financial products], Trial Tr. at 1097, 1124-1125 [acknowledging that the Internal Swaps were included in the Initial Net Exposure Amount].)

Initial Net Exposure Amount is defined in the SWA[8] as "111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof [i.e., the March 14, 2008 "as of" date of the SWA] exceeds the Initial Deposit." As defined in SWA Section 12 (A), the Initial Deposit is the deposit of approximately $74,000,000 in cash and Eligible Securities made on the date of execution of the SWA. Aggregate Net Exposure Amount is defined as the amount by which CDS Exposure and Cash Exposure, as of the date of the collateral calculation, exceed the balance on deposit in the Deposit Account plus Positive Carry with respect to each Collateral Obligation.[9] As discussed above, Section 12 (C) of the SWA requires a deposit of $10 million in additional collateral when the Deposit Threshold Exposure Amount is greater than or equal to $100 million. The Deposit Threshold Exposure Amount is defined in the SWA as "the amount, if any, by which (i) the Aggregate Net Exposure Amount as of [the date of the collateral calculation] exceeds (ii) the Initial Net Exposure Amount." The Initial Net Exposure Amount, which includes the Internal Swaps, is thus integral to the calculation of the Deposit Threshold Exposure Amount.

Based on this reading of the SWA as a whole, the court concludes that the Internal Swaps were Existing Credit Default Swaps within the meaning of the SWA. The lack of ISDA documentation was therefore not a bar to their inclusion in the collateral call calculation.

The court rejects Highland's further contention that the Internal Swaps should not have been included because there was "no economic consequence" to UBS from these swaps. (Ds.'s

[8] Definitions are found in the Definitions section of the SWA (SWA, Ex. A), unless the term is defined in a particular provision of the SWA, in which case the provision will be cited.
[9] Positive Carry is defined in the CWA. As explained by Adam Warren, Highland's damages expert, carry includes interest payments from the CLOs. (Warren Testimony, Trial Tr. at 1299.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Findings, ¶ 33.) The complex formula set forth in Section 12 for calculating the exposure of UBS on the assets in the warehouse that would trigger a collateral call does not contain any requirement that UBS include in the calculation only assets for which it was at risk of sustaining actual losses.[10]

The court further holds that, although the Internal Swaps were properly included in the third collateral call calculation, the Lehman Swaps were not. The parties do not dispute that the Lehman Swaps had been terminated based on the Event of Default that occurred upon Lehman's filing for bankruptcy on September 15, 2008. (DX 87 [UBS Default Notice].) Highland asserts, and UBS does not persuasively counter, that the Lehman Swaps should not have been included in the third collateral call. Indeed, UBS's Grimaldi forthrightly acknowledged that, given the termination, there should not have been "markdowns" on the Lehman Swaps. (Grimaldi Testimony, Trial Tr. at 297-298.).

Highland contends, based on the inclusion of the Lehman Swaps and Internal Swaps in the third collateral call calculation, that UBS "committed a prior material breach by failing to

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[10] In view of this holding that the Internal Swaps were properly included in the collateral call calculation pursuant to the unambiguous terms of the SWA, the court has not considered parol evidence on the issue.

The court thus rejects Highland's request for a finding that UBS admitted that the SWA required ISDA documentation of the Internal Swaps. (See Ds.'s Findings, ¶¶ 30-31.) This request is based on testimony of UBS's Keith Grimaldi who, when shown Section 3 during cross-examination and asked if every CDS was required to have ISDA documentation, responded: "According to the language, yes." (Grimaldi Testimony, Trial Tr. at 262-264.) Even if this evidence were properly considered, Highland's reliance on this answer ignores that Mr. Grimaldi further testified that ISDA documentation would not be "filled out" until the assets were transferred in the securitization. (Id. at 267-270.)

The court further notes that Highland requests a finding, arguably in support of its claim that the CDSs were not Existing Credit Default Swaps, that a CDS "cannot be created with the same legal entity on both sides of the transaction. . . ." (Ds.'s Findings, ¶ 29.) Even if parol evidence were properly considered, there was substantial evidence in the record that internal swaps were common in securitizations of synthetic assets. (LeRoux Testimony, Trial Tr. at 1673-1676; (Vinella Testimony, Trial Tr. at 1158-1162 [denying that intracompany swaps are "economic transactions" but acknowledging their use in CLO securitizations].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

properly calculate the collateral call[]." (Ds.'s Findings, ¶¶ 23, 27-28.) In support of this contention, Highland relies on the testimony of its expert Peter Vinella. According to Mr. Vinella's own analysis, however, if the Lehman swaps are excluded from the calculation for the third collateral call, but the Internal Swaps are included, the total increase in the Deposit Threshold Exposure Amount as of November 4, 2008 is $328.62 million—an amount greater than the $300 million required to authorize the third collateral call pursuant to Section 12 of the SWA. (Vinella Testimony, Trial Tr. at 1122-1139; DX Demo. 8.) Louis Dudney, UBS's expert in forensic accounting and damages (Trial Tr. at 824), analyzed Mr. Vinella's testimony and confirmed, using the same numbers as Mr. Vinella, that the Deposit Threshold Exposure Amount still exceeded $300 million on November 4, 2008, after excluding the Lehman Swaps but including the Internal Swaps. (PX Demo. 20 [accepted without objection in lieu of Dudney rebuttal testimony, Trial Tr. at 1870-1871].)

Based on this credible testimony that the threshold for the collateral call was met without the Lehman Swaps, the court holds that the third collateral call did not constitute a material breach of the contract, notwithstanding UBS's improper inclusion of the Lehman Swaps in the calculation.[11] (See generally Awards.Com v Kinko's, Inc., 42 AD3d 178, 187 [1st Dept 2007], affd 14 NY3d 791, 793 [2010]; Frank Felix Assocs., Ltd. v Austin Drugs, Inc., 111 F3d 284, 289 [2d Cir 1997] [under New York law, for a breach to be material, "it must go to the root of the agreement between the parties"] [internal quotation marks and citations omitted].)

[11] In view of this holding that the Deposit Threshold Exposure Amount exceeded $300 million as of November 7, 2008, the court need not reach UBS's contention that the collateral call was proper because the Deposit Threshold Exposure Amount exceeded $300 million as of December 2, 2008, prior to the termination of the transaction. (Ps.'s Findings, at 15 n 10.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

As discussed above, there is no dispute that the Fund Counterparties failed to meet the third collateral call. The court accordingly finds that the Fund Counterparties breached the SWA and turns to the issue of damages.

DAMAGES

Designation of Ineligible Securities

A critical issue in determining UBS's damages is whether UBS may recover damages for CDSs that UBS retained after its termination of the 2008 transaction, under these circumstances in which UBS did not designate the underlying reference obligations for any of the CDSs as "Ineligible Securities." Resolution of this issue requires interpretation of the SWA. Highland and UBS both contend that the SWA is unambiguous as to whether Ineligible Securities must be designated, but assert fundamentally inconsistent readings of the Agreement. (Ds.'s Findings, ¶¶ 44-49; see Ps.'s Findings, at 29 n 21.)

As held above, the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace, 86 NY2d at 548.) Ambiguity will be found to arise where the terms of a contract are "subject to more than one reasonable interpretation." (Universal Am. Corp., 25 NY3d at 680 [internal quotation marks and citation omitted].) As also held above, a court should construe a contract so as to give full meaning and effect to its material provisions, and should read the contract as a whole and so as not to render any portion meaningless, if possible. (See Beal Sav. Bank, 8 NY3d at 324-25.)

Sections 5 (A), 5 (B), and 6 of the SWA are relevant to the calculation of CDS damages: Section 5 (A) provides for the calculation of losses with respect to CDSs removed from the warehouse during the term of the Agreement or "otherwise pursuant to Section 6"; Section 5 (B) (2) governs the calculation of losses upon a closing; and Section 6 governs this calculation in the event of a failure to close, incorporating terms from Sections 5 (A) and 5 (B).

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Section 6 provides in pertinent part:

> "(A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
>
> . . .
>
> (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

CDS Losses are in turn defined in Section 5 (B) (2), the closing provision, as:

> "(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, plus (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, plus (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the 'CDS Losses') . . . ."

Relying on the requirement in the definition of CDS Losses that Reference Obligations be designated as Ineligible Securities, Highland argues that "[t]he term 'CDS Losses'

unambiguously limits UBS's recovery for unrealized (mark-to-market) losses to securities designated as 'Ineligible Securities,' and the Court is bound to enforce the agreement pursuant to its unambiguous terms." (Ds.'s Findings, ¶ 46.) Put another way, Highland argues that UBS may recover mark-to-market losses only on CDSs that have been designated Ineligible Securities. (Id., ¶ 53.)[12] UBS asserts, among other things, that under Section 6, UBS may terminate, novate, or retain CDSs regardless of eligibility, that ineligibility designations are not relevant absent a closing, and that Highland's reading renders meaningless other provisions of the SWA. (Ps.'s Findings, at 29 n 21.)

Upon close reading of the SWA, the court concludes that the SWA is not ambiguous with respect to ineligibility designations and that, under Section 6, upon the failure to close UBS is entitled to retain CDSs and to recover losses for the retained CDSs, without first designating the underlying Reference Obligations as Ineligible Securities. Section 6 (A) expressly provides for UBS to terminate or novate the CDSs, and does not require UBS to first make such designation. Although Section 6 (A) does not also, by its terms, provide for UBS to retain CDSs, a reading of the contract as a whole leaves no question that UBS was not only entitled to retain the CDSs upon the failure to close, but also that it was entitled to recover losses on the retained CDSs without first designating the underlying Reference Obligations as Ineligible.[13]

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[12] Highland's damages expert, Adam Warren, testified that realized losses are losses sustained where a transaction has been closed out and an actual cash payment has been made. (Warren Testimony, Trial Tr. at 1249, 1253.) He also testified that, in his opinion, there were no unrealized losses in the Synthetic Warehouse because no assets had been designated as ineligible. (Id. at 1257 ["[O]ur computation is that there are no unrealized losses in the Synthetic Warehouse because of the need to . . . create a designation of ineligible. And we saw no evidence of any Synthetic Warehouse asset being designated ineligible"].)

[13] In its decision of defendants' motion for summary judgment, this court held that it could not determine on the record of that motion whether the SWA was ambiguous with respect to UBS's entitlement to recover losses on retained CDSs, pursuant to Section 6, without a prior designation of such assets as Ineligible Securities. (2017 NY Slip Op. 30546[U], 2017 WL 1103879, * 4-7 [Sup Ct, NY County Mar. 13 2017], affd 159 AD3d 512, lv dismissed 32 NY3d 1080.) With the benefit of the parties' extensive trial briefing on this issue, the court now concludes, for the reasons discussed further in the text, that the agreement is not ambiguous.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

As the above-quoted definition of CDS Losses in Section 5 (B) (2) shows, this definition relates to Credit Default Swaps which, upon a closing, have been "terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security . . . ." After setting forth the definition of CDS Losses (and CDS Gains) in the context of a closing, Section 5 (B) (2) further provides: "To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof."

Significantly, while Section 6 (C) incorporates the defined term CDS Losses, the term CDS Losses also incorporates both the definition of Ineligible Security and the term Replacement Losses from Section 5 (A). These incorporated terms modify the definition of CDS Losses where a closing does not occur.

The definition of Ineligible Security pertains to securities that are ineligible for securitization upon a closing. The SWA thus defines Ineligible Security, in pertinent part, as "any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination . . . ." (SWA, Exhibit A-2 [emphasis added].)

Section 5 (A), which defines the term Replacement Losses, distinguishes between such Losses sustained during the term of the Agreement and those sustained upon termination in the event of a failure to close pursuant to Section 6. Section 5 (A) primarily addresses the removal of CDSs from the warehouse "during the term of this [the SWA] Agreement" where "a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria" that must be met for securitization. This section provides that "UBS shall be entitled in

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio." Section 5 (A), however, continues:

> "To the extent any such Credit Default Swaps are terminated or novated, or at UBS's discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps [according to the formula that follows]."

(emphasis added). Section 5 (A) then sets forth a formula for calculating Replacement Gain and Replacement Loss, which specifically provides for such calculation not only upon termination or novation but also upon UBS's retention of the CDSs. (SWA § 5 [A] [1] – [3].)

Section 5 (A) thus clearly contemplates that UBS may novate, terminate, or retain CDSs both during the term of the Agreement and in the event of a failure to close. The Section affords UBS the discretion to terminate, novate, or retain CDSs "pursuant to Section 6," as distinct from its discretion to do so upon a designation of the underlying Reference Obligation as Ineligible during the term of the Agreement. Any other reading would render meaningless the Section 5 (A) provision "or otherwise pursuant to Section 6."

Moreover, in order to reconcile all of the provisions of the SWA, the Section 5 (B) (2) definition of CDS Losses, when used in Section 6, cannot be construed as requiring a designation of Ineligible Securities. As discussed above, Ineligible Securities are defined as securities ineligible for sale at a closing. Section 5 (B) (2), which governs the calculation of losses where a closing will occur, requires the designation of Ineligible Securities to facilitate the parties' calculation of losses on assets deemed ineligible for inclusion in the securitization that will occur upon the closing. When a closing will not occur, none of the CDSs or other assets will be securitized, and there is no need to distinguish between eligible and ineligible assets. While the

definition of CDS Losses with the Ineligible Security designation requirement serves the purposes of Section 5 (B) (2) in the event of a closing, it is inconsistent with the CDS Loss calculation required in Section 6 where the closing does not occur.

Contrary to Highland's apparent contention (Ds.'s Findings, ¶ 46), a reading of the CDS Loss provision in Section 6 to permit calculation of losses on retained assets without an Ineligible Security designation does not violate the fundamental precept that a defined term in a contract must be given effect. (See generally Mionis v Bank Julius Baer & Co., 301 AD2d 104, 109 [1st Dept 2002].) Rather, the CDS Loss definition, as used in Section 6, is modified by the contractual provisions discussed above.

Although inartfully drafted, the SWA is not ambiguous. If the contract is read as a whole, and all of the provisions are given meaning, it is reasonably susceptible to only one meaning—namely, that CDS Losses for retained assets may be recovered without a designation of the underlying Reference Obligations as Ineligible Securities where, as here, the contract has been terminated before the closing.[14] The court accordingly holds that UBS is entitled to recover damages for the retained CDSs in the Synthetic Warehouse.[15]

Calculation of Damages

As discussed above, UBS terminated the transaction based on the Fund Counterparties'

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[14] The court notes that the SWA and the Cash Warehouse Agreement (CWA) both contain provisions which state that the two agreements "set forth the entire understanding of the parties hereto relating to the subject matter hereof . . . ." (SWA, § 18; CWA, § 18.) Assuming, without deciding, that these agreements should be read together in construing the SWA, the court finds that, although the assets at issue in the SWA and the CWA have markedly different attributes, the CWA is consistent with the SWA to the extent that the CWA permits UBS, in the event a closing does not occur, to retain and recover for losses on the CLOs that are the subject of the CWA, without a designation of the CLOs as Ineligible Securities. (See CWA, §§ 5 [A], 7 [A].)

[15] In view of this holding that the SWA is not ambiguous as to whether CDS losses may be recovered without designation of the underlying Reference Obligations as Ineligible Securities, the court has not considered any parol evidence, either documentary or testimonial, in construing the SWA in this regard. Without limiting the foregoing, the court has not considered prior drafts of the SWA, which Highland offered in the event parol evidence were to be admitted. (See Ds.'s Findings, ¶ 53.)

failure to meet the third collateral call. UBS sent Highland a notice, dated December 3, 2008, stating that a Termination Date had occurred under the Warehouse Agreements but that it would forbear from exercising its remedies for two days to permit the Fund Counterparties to meet this collateral call. (PX 7.) UBS then sent a further notice to Highland, dated December 5, 2008, stating that it would exercise its remedies as the call had not been met. (PX 8.) UBS held a public auction of the assets in the Knox Warehouse on December 16, 2008. By notice dated December 19, 2008, UBS demanded payment for its claimed losses based on the results of the auction—$157,949,885.47 for the assets in the Cash Warehouse (PX 10) and $587,357,060.59 for the assets in the Synthetic Warehouse. (PX 11.) UBS also notified Highland that it elected to retain the Collateral Obligations in the Cash Warehouse. (PX 10.)

CDS Damages

Highland argues that even if the recovery of damages for the CDSs is not barred by UBS's failure to designate the Reference Obligations for the CDSs as Ineligible Securities (a claim this court has rejected above), UBS has not proved damages for these CDSs. Specifically, Highland contends that UBS did not comply with the contractual requirements for calculation of losses because its post-termination auction was untimely and otherwise improper. (Ds.'s Findings, ¶¶ 57-59.) Highland also contends that UBS's marks do not otherwise "establish a reasonable connection between the asset value and UBS's alleged damages." (Id., ¶¶ 60-65.) UBS disputes these assertions. (Ps.'s Findings, at 29-31.)

Sections 6 (C), 5 (B) (2), and 5 (A) (3) are the provisions of the SWA that govern the calculation of CDS Losses upon termination. Section 6 (C) provides in full:

> "To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

> amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date."

As discussed above, the definition of CDS Losses in Section 5 (B) (2) includes Replacement Loss, the calculation of which is governed by Section 5 (A). With respect to Replacement Loss relating to CDSs that are retained, Section 5 (A) (3) provides in full:

> "To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS if unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS's position under such Credit Default Swap."

The SWA, by its terms, thus contemplated that payment would be made within three days after the Termination Date, subject to notice from UBS. As the SWA provided for an auction to calculate the amount of the losses, it also contemplated that an auction could or would occur within that three day period.

By the terms of UBS's notices to Highland, although a Termination Date had occurred as of December 3, UBS extended the Fund Counterparties' time to meet the third collateral call until December 5. The court thus finds that the Fund Counterparties' breach of the Agreements for failure to meet the third collateral call occurred on December 5. UBS did not conduct the auction to calculate the CDS Losses until December 16.

UBS's delay of approximately 11 days in conducting the auction, while seemingly de minimis, in fact had momentous financial consequences, given that the delay occurred in the wake of the September 15, 2008 Lehman bankruptcy filing and at the height of the financial crisis. With the market spiraling downward, the CDS losses ascertained through the auction process were approximately $117 million more than the losses calculated by using UBS's marks

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

on either December 3 or December 5. (PX Demo. 21; DX Demo. 12 [showing UBS and Highland marks as of December 3 and 5; PX Demo. 28 at 60 [Ps.'s Closing Statement Demonstrative Exhibit, acknowledging that CDS damages, as calculated based on the auction, exceeded the losses calculated using UBS's marks on December 3 and 5 by over $117 million].)[16]

UBS contends that the three day payment period was for its benefit and that it "could exercise its right to get paid after three business days without waiver." (Ps.'s Findings, at 28.) The court agrees that UBS's delay in demanding payment or holding the auction did not result in a waiver of its right to seek payment of its damages resulting from the Fund Counterparties' breach. (See SWA § 20 ["Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver hereof. . . ."].) Highland correctly contends, however, that the delayed auction could not serve as a basis for calculating UBS's damages because the results of the auction did not reflect market conditions as of the date of termination or breach. (See Ds.'s Findings, ¶ 57.)

As explained by the Court of Appeals:

> "It has long been recognized that the theory underlying damages is to make good or replace the loss caused by the breach of contract. Damages are intended to return the parties to the point at which the breach arose and to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach."

(Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256, 261 [1998] [internal citations omitted].)

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[16] At the trial, the parties stipulated to dispense with rebuttal testimony from plaintiffs' damages expert, Louis Dudney and, in lieu of such testimony, to the admission into evidence of plaintiffs' Demonstrative Exhibits 20 and 21, and defendants' Demonstrative Exhibit 12. (Trial Tr. at 1868, 1870 [Stipulation].) PX Demo. 21 and DX Demo. 12, which were prepared by Mr. Dudney, calculated damages using plaintiffs' and defendants' marks, respectively, on December 3 and 5, 2008. (Trial Tr. at 1870-1877.)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

It is further settled that damages need not be proven with mathematical certainty. It is sufficient that a reasonable basis for the calculation of damages be shown. (See generally J.R. Loftus, Inc. v White, 85 NY2d 874, 877 [1995] ["While a plaintiff may recover damages when the measure of damages is unavoidably uncertain or difficult to ascertain, a reasonable connection between a plaintiff's proof and a [] determination of damages is nevertheless necessary"]; CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, *2 [US Dist Ct SD NY, Sept. 29, 2011] ["The law of New York is clear that once the fact of damage has been established, the non-breaching party need only provide a stable foundation for a reasonable estimate [of damages]" [internal quotation marks and citations omitted, brackets in original].)

UBS's December 16, 2008 auction cannot satisfy either of these standards because, as held above, the auction did not provide a reliable basis for determining UBS's losses at, or even shortly after, the breach, due to the exceptional circumstances presented by the financial crisis.[17] The court accordingly turns to the alternative basis advanced by UBS for the calculation of damages—its marks on December 5, 2008. (Ps.'s Findings, at 29.)

It is well settled that "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma v Skaarup Ship Mgt. Corp., 916 F2d 820, 825 [2d Cir 1990], cert denied 499 US 907 [1991] [applying New York law and citing Simon v Electrospace

[17] There is authority that "in accordance with the objective that a party seeking recovery for breach of contract is entitled 'to be made whole' as of the time of the breach, the [factfinder] should be able to make its valuation determination on all relevant elements of the case, whether dated prebreach, on the date of breach, or 'some short time period thereafter.'" (Credit Suisse First Boston v Utrecht-America Fin. Co., 84 AD3d 579, 580 [1st Dept 2011] [quoting Boyce v Soundview Tech. Group, Inc., 464 F3d 376, 389 [2d Cir 2006] [other internal quotation marks and citations omitted].) Although the auction was held shortly after the breach, this authority does not support calculation of damages based on the auction results, as the auction did not provide a reliable basis for assessing the losses.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Corp., 28 NY2d 136, 145-146 [1971], motion to amend remittitur and clarify denied 28 NY2d 809].) In accordance with the objective that the injured party be made whole, "damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.)

UBS offered credible testimony that its December 5, 2008 marks reasonably reflected the market value of the CDSs as of the December 5 breach date. In particular, Timothy LeRoux, who at the time of the transaction was second in command to Mr. Grimaldi on the UBS trading desk (LeRoux Testimony, Trial Tr. at 1640), gave credible testimony that, in the regular course of business, the trading desk "marked to market" hundreds of CLO assets, and every week or two was required to assign values on every one of the assets, both cash and synthetic, in the Knox Warehouse. (Id. at 1724.) Mr. LeRoux also described the marking process and identified information, including public information as to offers and bids on CDSs in the marketplace, that UBS considered in developing "objective" prices. (Id. at 1727, 1745-1750.) Mr. Grimaldi also testified that, although the trading desk performed the mark-to-market valuation of the assets in the Knox Warehouse, the UBS valuation group established oversight due to the volatility of the market and "would look at other market observations and make sure that those [the trading desk marks] were in line with the marketplace." (Grimaldi Testimony, Trial Tr. at 207-208.)

Highland does not dispute that the mark-to-market process is a methodology for determining loss in market value of retained assets. (See e.g. Testimony of Adam Warren [Highland's damages expert], Trial Tr. at 1268-1269; Testimony of Philip Braner [Highland former executive], Trial Tr. at 469-472; Testimony of UBS's Timothy LeRoux, Trial Tr. at 1640, 1727-1729.)

Rather, in claiming that UBS's marks are not competent evidence on which to award damages, Highland suggests that the setting of marks by the trading group involved a conflict of

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

interest, because the trading group's bonuses were based on the performance of the mark-to-mark assets and the group had the incentive to inflate the value of the assets. (Ds.s' Findings, ¶¶ 61-62.) Highland makes no showing that UBS inflated the value of the CDSs or that trading groups do not routinely develop marks. Moreover, Highland's assertion that "UBS's trading group alone set the marks for the Knox Warehouse assets" (Ds.'s Findings, ¶ 62) ignores UBS's credible testimony, discussed above, that the valuation group exercised oversight in connection with the development of the marks.

Highland's further assertion that its own marks are more reliable (Ds.'s Findings, ¶ 65) is unsupported by persuasive evidence. Philip Braner, who ultimately became Chief Operating Officer of the Highland Capital Management CLO Group and COO of Highland Financial Partners (Braner Testimony, Trial Tr. at 397), testified that Highland was itself tracking marks on the assets in the Knox Warehouse (id. at 615) and had an "internal valuation team that was responsible for accumulating marks" in a process in which portfolio managers of the Highland funds participated. (See id. at 467.) While Highland appears to assert that its marks are more reliable than UBS's because they were set by a valuation team, Highland fails to show that the role of its valuation team differed in any material respect from that of the UBS valuation group that performed oversight on its trading group in the marking process.

Notably, Highland fails to explain how its methodology in setting marks was more reliable than UBS's. Adam Warren, Highland's damages expert, forthrightly testified that he was not opining on the reasonableness of any marks in this case (Warren Testimony, Trial Tr. at 1247-1248), and he did not in fact give any testimony on whether UBS's or Highland's marks were more reliable.

The evidence at trial also demonstrated that Highland, like UBS, set marks on the CDSs on an asset by asset basis from March 2008 through October 2008. While there were differences

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

between Highland's and UBS's marks during this period, the Highland and UBS marks in the month of October were substantially similar. The difference in the marks did not escalate substantially until November 2008. (PX Demo. 9, at 4.) Mr. Dudney gave testimony, which was not disputed, that although Highland, like UBS, had been setting marks on an asset by asset basis, Highland stopped doing so as of October 2008 and, in a November 30, 2008 calculation of damages, attributed the same mark (37) to each asset. (Dudney Testimony, Trial Tr. at 883-884, 905-909, DX 116.) Highland offered no explanation for this change in methodology. Mr. Dudney, in contrast, gave plausible testimony that this use of the same mark did not make sense given the deterioration of the market. (Id. at 908.)

In sum, based on the credible evidence at the trial, the court holds that UBS has met its burden of demonstrating that its December 5, 2008 marks provide a reasonable basis, under the circumstances, for the calculation of damages at the time of the breach. In so holding, the court rejects Highland's not fully articulated contention that only an auction, and not a mark-to-market methodology, is a reliable method for calculating damages. (See Ds.'s Findings, ¶ 59.) Highland's reliance on the testimony of its damages expert, Adam Warren, in support of this contention (see id.) is misplaced. While Mr. Warren testified that CDSs are "bespoke contracts," he did not give any testimony that an auction was required to ascertain their value.

Further, as held above, the auction did not provide a reliable basis for determining UBS's damages due to the volatility of the market at the time of the auction. It bears emphasis that, although the market was also volatile at the time the December 5, 2008 marks were accumulated, Highland has not advanced an alternative, other than the non-viable auction, to the mark-to-market valuation methodology. Nor has Highland made any showing that the market value of

the CDSs was not reasonably determinable as of the date of breach using the mark-to-market valuation methodology.[18]

The court further holds that UBS has met its burden of demonstrating the reasonableness of its calculation of damages using those marks. UBS's and Highland's experts both provided the court with calculations of damages using UBS's and Highland's marks, respectively, as of December 5, 2008. Mr. Warren confirmed that his main differences with Mr. Dudney regarding the calculation of damages for the Synthetic Warehouse were that Mr. Dudney considered it appropriate, and he did not, to include damages for unrealized CDS losses and for the 20 Internal Swaps in which UBS was both the protection seller and the protection buyer. (Warren Testimony, Trial Tr. at 1298; DX Demo. 12; PX Demo. 21; see also Dudney Testimony, Trial Tr. at 1004.)

Mr. Warren excluded from his damages calculation unrealized CDS losses for all CDSs as to which a designation of ineligibility had not been made. He testified that his basis for doing so was his understanding of the contract—i.e, his understanding that the SWA required such designation—and not industry custom. (Warren Testimony, Trial Tr. at 1281-1282.) For the reasons discussed above, this court has rejected Highland's position that the SWA should be

[18] In its post-trial briefing, Highland sought a finding that if UBS is held to be entitled to recover damages for CDS losses, Highland's marks are more reliable than UBS's for determining those damages. (Ds.'s Findings, ¶ 65.) Highland did not argue that the market value of the losses could not reasonably be determined by using marks. In contrast, in support of its claim that it is entitled to an offset against CDS damages for post-breach termination payments received by UBS on the CDSs, Highland questioned the accuracy of the market valuation at the time of the breach. Highland thus asserted in a footnote: "Given the scant market pricing data available at the time of the breach, post-termination payments and asset dispositions are relevant for the additional reason that they provide a more accurate measurement of the actual value of the Knox assets." (Ds.'s Post-Trial Memo., at 8 n 5.) This assertion is unsupported by any citation to trial testimony. More important, at the trial Highland did not offer any expert testimony that the mark-to-market methodology was not a reliable basis for calculating the CDS damages. For the additional reasons set forth in the section of this decision on Highland's requested Offset for Post-Breach Appreciation In CDS Asset Value, the court finds that offset of post-breach payments received by UBS on the CDSs would be inconsistent with calculation of UBS's damages based on their market value at the time of the breach.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

construed as requiring ineligibility designations as a condition of the inclusion of unrealized losses on the CDSs in the calculation of damages. Also for the reasons discussed above, the court has rejected Highland's position that the losses on the Internal Swaps should not be included in this calculation.

Review of the experts' calculations shows, moreover, that when such losses are included in the calculations, the difference between Highland's and UBS's totals is substantially reduced. As previously noted, the parties stipulated to the introduction into evidence of charts prepared by Mr. Dudney comparing his and Mr. Warren's calculations of CDS damages using UBS's and Highland's marks as of December 5, 2008. Using Highland's marks, Mr. Dudney calculated CDS mark-to-market losses of $388,284,750, compared to Mr. Warren's calculation of $26,952,895—a difference of $361,331,855. (DX Demo. 12.) Using UBS's marks, Mr. Dudney calculated losses of $470,113,605, compared to Mr. Warren's calculation of $26,952,895—a difference of $443,160,710. (PX Demo. 21.)

The difference in the totals is largely due to Mr. Warren's exclusion from his calculation of all unrealized CDS losses and all losses for the Internal Swaps. (Warren Testimony, Trial Tr. at 1296-1299.) His calculation of $26,952,895 for CDS losses includes only realized CDS losses. (Id. at 1250.) According to Mr. Warren, the Internal Swaps account for $93,952,173 of the CDS damages using UBS's marks, or $68,801,027 using Highland's marks. (Id. at 1269.) Although Mr. Warren disputed UBS's entitlement to unrealized CDS losses, he performed a calculation including such losses. Using UBS's marks as of December 5, 2008, these losses totaled $355,487,606. (DX Demo. 10, at 14.) Using Highland's marks as of that date, these losses totaled $299,118,973. (Warren Testimony, Trial Tr. at 1269; DX Demo. 10, at 14.) Mr. Warren's total, using UBS's marks, for the Internal Swaps ($93,952.173) and the unrealized CDS losses ($355,487,606) was $449,439,779. (DX Demo. 10, at 14.) As stated above, Mr. Dudney's

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

calculation of total Synthetic Warehouse losses, using UBS's December 5, 2008 marks, was $470,113,605. Given the magnitude of the damages, this disparity is not material.

The court accordingly holds that UBS incurred losses in the Synthetic Warehouse of $470,113,605 as of December 5, 2008, the date of the breach, subject to the adjustments discussed below.

CLO Damages

Highland does not dispute that unrealized losses are recoverable for the CLO assets. (Warren Testimony, Trial Tr. at 1293.) Moreover, UBS's (Mr. Dudney's) and Highland's (Mr. Warren's) calculations of the CLO losses as of December 5, 2008 are the same: Using Highland's marks, these losses were $106,157,101. (DX Demo. 12, at 2.) Using UBS's marks, the losses were $128,848,101. (PX Demo. 21.) Having concluded that UBS's damages were properly calculated based on UBS's marks as of December 5, 2008, the date of the breach, the court holds that UBS incurred losses in the Cash Warehouse of $128,848,101, subject to the adjustments discussed below.

Adjustments to Damages Calculation

In calculating the Synthetic and Cash Warehouse losses, Mr. Dudney and Mr. Warren made adjustments for the same items: carry (premiums and interest), collateral value, financing fees, and financing savings. Mr. Dudney's adjustment of $79,587,557 and Mr. Warren's adjustment of $76,632,634 did not differ materially. (PX Demo. 21.) According to Mr. Warren, the difference of approximately $3 million is due to Mr. Warren's exclusion of the Internal Swaps in calculating the carry. (Warren Testimony, Trial Tr. at 1298-1299.) As the court has held that the Internal Swaps were properly included in the damages calculation, Mr. Dudney's adjustments will be accepted.

Reducing UBS's damages by the adjustments, the court holds that UBS sustained total

damages of $519,374,149 (Cash Warehouse Losses of $128,848,101 plus Synthetic Warehouse Losses of $470,113,605 minus $79,587,557).

OFFSETS

Offset for Post-Breach Appreciation In CDS Asset Value

A central issue in this action is whether Highland is entitled to an offset against UBS's damages for appreciation in the value of the CDSs after the breach. The parties stipulated that UBS received post-breach termination payments net of carry on the CDSs, including the Internal Swaps, in the amount of $202,223,059. (DX 491.) It is undisputed that these payments were received months and, for many of the CDSs, years after the termination of the transaction. (Ds.'s Post-Trial Memo., at 10 [acknowledging that UBS "liquidated the assets years later"]; PX 335 [spreadsheet showing termination dates for CDSs through 2011].)

Highland argues that, at the time the transaction was terminated, "frozen credit markets had created a severe mismatch between the assets' alleged market value and their actual value based on their cash flows." (Ds.'s Post-Trial Memo., at 10.) Highland further argues that UBS was able to sell these assets for hundreds of millions of dollars more than their December 2008 marks and that, while UBS is entitled to retain the sale proceeds, "it cannot ignore these monies in calculating the harm it actually suffered." (Id. at 11.) According to Highland, if disposition of the assets after the termination is not considered, UBS will receive "an enormous windfall." (Id.) UBS acknowledges that if a non-breaching party obtains a benefit "because of the breach," the benefit must be offset against the non-breaching party's damages. (Ps.'s Post-Trial Memo., at 6 [emphasis UBS's].) UBS argues, however, that the Fund Counterparties' breach was not a but for cause of the post-breach payments UBS received for the CDSs. (Id. at 7.) Rather, subsequent gains that resulted from UBS's disposition of the assets were "the result of UBS's contractual rights [to retain the assets] in the event of any termination and of its subsequent

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

investment strategy." (Id. at 14.) According to UBS, the Fund Counterparties' proposed offset would deprive UBS of the benefit of the bargain and result in a windfall for the Fund Counterparties. (Id.)

As discussed above, contract damages are intended to make "good or replace the loss" caused to a party by the breach of contract and "to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach." (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.) Further, "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma, 916 F2d at 825 [applying New York law and citing Simon, 28 NY2d at 145-146].)

The calculation of damages is also subject to the fundamental precept that where a non-breaching party acquires a "benefit or opportunity for benefit . . . because of the breach, a balance must be struck between benefit and loss" and the benefit must be offset against the non-breaching party's damages. (Indu Craft, Inc. v Bank of Baroda, 47 F3d 490, 495 [2d Cir 1995] [applying New York law]; accord Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, 289 [SD NY 2010] ["[I]f a victim derives a benefit from the breaching party's breach of contract, the breaching party only is responsible for the victim's net loss"], reconsideration denied 2010 WL 3431132; Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, 84 [1987], rearg denied 70 NY2d 694 [holding, in a "cover" action governed by the Uniform Commercial Code, that "'[g]ains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach'"] [quoting 5 Corbin, Contracts § 1041].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Here, although UBS and Highland agree that any benefit derived by UBS because of the breach must be offset against its losses, neither party has cited, and the court's own research has not located, any case in which a court has considered how to apply this precept to a non-breaching party's retention of assets upon a failed securitization transaction and realization of subsequent gains. There is, however, a substantial body of law involving a breaching party's failure to deliver or purchase assets subject to fluctuations in value, in which the courts have assessed damages based on the market value of the assets at the time of breach and have declined to consider any subsequent increases or decreases in value of the assets. As discussed further below, the court concludes that these cases are inconsistent with the offset sought by Highland.

As the Second Circuit has explained in reviewing this body of law, New York courts reject damage awards "based on what 'the actual economic conditions and performance' were in light of hindsight." (Sharma, 916 F2d at 826, quoting Aroneck v Atkin, 90 AD2d 966, 967 [4th Dept 1982], lv denied 59 NY2d 601 [1983].) "They have explicitly rejected the use of subsequent changes in value or profits where they would increase an award, and where they would decrease the award." (Sharma, 916 F2d at 826 [internal citations omitted].)

In the securities context, courts have repeatedly held that the damages for failure to deliver or purchase shares of stock should be based on their market value at the time of breach, and not on any subsequent increase or decrease in their value. (Simon, 28 NY2d at 145-146 [where the seller breached a contract to deliver shares, holding: "The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach. The rule is precisely the same when the breach of contract is nondelivery of shares of stock"] [internal citations omitted]; Aroneck, 90 AD2d at 967 [where the buyer breached a contract to purchase shares, holding that

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

damages should be based on market value at the time of breach, and rejecting the buyer's theory that the "value should be based on the actual economic conditions and performance" of the company post-breach]; Emposimato v CIFC Acquisition Corp., 89 AD3d 418, 421 [1st Dept 2011] [quoting Aroneck and citing Simon in holding that "[i]n the case of a breach of contract to sell securities, expectation damages are calculated as 'the difference between the agreed price of the shares and the fair market value at the time of the breach'"]; Oscar Gruss & Son, Inc. v Hollander, 337 F3d 186, 197 [2d Cir 2003] [following Simon and Aroneck in a case involving the defendant's breach of a contract to deliver warrants]; see also Kaminsky v Herrick Feinstein LLP, 59 AD3d 1, 11-12 [1st Dept 2008], lv denied 12 NY3d 715 [2009] [holding that damages for breach of contract to deliver shares prior to an initial public offering (IPO) should be awarded based on the value of the shares at time of the breach, not their higher value post-IPO].)

The court holds that these cases involve transactions that are analogous to (although far less complex than) the transaction at issue, and apply the same measure of damages that this court has adopted above—namely, the measure of damages based on the market value of the assets on the date of the breach. These cases accordingly govern the calculation of damages here. The court notes, moreover, that sound reasons support the application of this measure of damages without consideration of post-breach fluctuations in the value of the assets.

As the Second Circuit reasoned, a contrary rule that would permit calculation of damages at the time of trial "would be a two-edged sword, because courts would have to diminish damage awards where the value of the item decreased or where losses were encountered subsequent to the breach as well as enhance them where conditions improve. However, New York courts have expressly refused to adopt this 'wait and see' theory of

damages." (Sharma, 916 F2d at 826.) In addition, although the court does not adjust for changes in the value of the shares when calculating damages according to the date of breach measure, the parties themselves can protect against changes in value by hedging or acquiring shares in the market. As the Second Circuit further reasoned: "To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under- or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income." (Sharma, 916 F2d at 826; see also Simon, 28 NY2d at 146 [where the seller breached a contract to deliver shares, reasoning that "[i]f plaintiff were anxious to own the shares rather than obtain their value, he was free to purchase them in the market. His cause of action should not and may not be converted into carrying a market 'call' or 'warrant' to acquire the stock on demand if the price rose above its value as reflected in his cause of action"].)

The court further holds that application of the date of breach measure of damages, without adjustments for fluctuations in the value of the assets, will serve the objective of putting UBS in the position it would have been in had the contract been performed. If the securitization had closed, UBS would have been entitled, under the express terms of the SWA, to novate to the Issuer its positions as protection seller on all of the eligible Knox CDSs. (SWA § 5 [B] [1].) As a result of the breach, UBS was forced to assume a substantial risk of loss under the CDSs that would have been novated to the Issuer had the closing occurred. As discussed above, the loss in market value of the retained CDSs as of the date of breach was determined using the mark-to-market methodology. More specifically, as confirmed by both UBS's and Highland's experts, the mark-to-market losses calculated as of the date of breach represent the cost to UBS to exit the CDSs—

that is, the payments to be made to third-parties so that they would take on, and UBS could extricate itself from, the risk. (Warren Testimony, Trial Tr. at 1304-1306; Dudney Testimony, Trial Tr. at 894-895.) A damage award for these mark-to-market losses will therefore compensate UBS for the exposure to risk that it would not have faced had the contract been performed.

To the extent that Highland contends that a damage award is not appropriate for these mark-to-market losses because the losses were not realized, the court rejects that contention. The damage award is appropriate, notwithstanding that the losses were not realized, because, as held above, the contract affords UBS the right of recovery for such losses. (See CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, * 2 [US Dist Ct SD NY, Sept. 29, 2011] [reasoning that, where the contractual definition of loss for the purpose of calculating damages did not require the CDS protection buyer to sustain "actual loss," "[t]he absence of an actual loss on a Reference Obligation transaction, thus, is not a barrier to [the protection buyer's] recovery. . ."] [emphasis in original].)

The court further holds that the record does not support Highland's contention that UBS's post-breach gains were realized because of the breach, and that this case therefore falls under the line of authority that requires an offset for such gains. Highland in effect contends that because UBS retained the CDSs as a result of the breach, it also realized the post-breach gains because of the breach.[19] That conclusion does not follow. As held

[19] In so holding, the court rejects UBS's contention that it would have been entitled to retain the CDS assets, regardless of the Fund Counterparties' breach, because the Agreements would have terminated in any event as of March 14, 2009, at which point UBS would have had the contractual right to retain the assets. (Ps.'s Post-Trial Memo., at 8.) This assertion is not only speculative but ignores that UBS did in fact acquire the right to retain the assets upon the Fund Counterparties' breach of the Agreements as a result of their failure to meet the third collateral call. For the reasons discussed in the text, however, the court cannot accept Highland's further contention that UBS realized gains on the retained CDSs because of the breach.

above, UBS had a contractual right to retain the CDSs upon the termination of the transaction based on the Fund Counterparties' breach of the SWA by failing to meet the collateral call. The SWA does not contain any provision that limited UBS's discretion as to when to dispose of the assets after termination. Rather, as UBS persuasively argues, the gains realized as a result of the post-breach disposition of assets were attributable not to the breach itself but to UBS's assumption of the risk of loss on the CDSs and its investment strategy as to when to dispose of them based on its assessment of the market. (See G & R Corp. v American Sec. Trust Co., 523 F2d 1164, 1175 [DC Cir 1975] [holding that while the transfer of property to the plaintiffs was caused by the defendant's breach, the profit realized by the plaintiffs from a post-breach sale was not "caused by the breach" but was "attributable to the [plaintiffs'] decision to hold [the property] until [its] condition and the market were favorable for sale"].)

Nor does Highland successfully argue that the gains realized by UBS on the post-breach disposition of the assets must be offset under general principles which require a party who suffers damages as a result of another's breach to take reasonable steps to mitigate its damages. (See Ds.'s Post-Trial Memo., at 5-9.) Highland cites cases requiring mitigation in connection with the purchase and sale of securities and transactions in other markets. (See e.g. Drummond v Morgan Stanley & Co., Inc., No. 95 Civ. 2011 [DC], 1996 WL 631723, * 2-3 [US Dist Ct SD NY, Oct. 31, 1996] [holding that where the buyer breached a contract to purchase securities, the seller must take steps to mitigate its damages by selling the securities within "a reasonable period of time"]; Saboundjian v Bank Audi (USA), 157 AD2d 278, 284-285 [1st Dept 1990] [holding that where a broker failed to execute a customer's speculative currency exchange order, the customer was required to direct execution of the trade "within a reasonable time after he learned that it had not been effected earlier"].)

These cases are inapposite, as the SWA affords UBS the contractual right to retain the securities upon the Fund Counterparties' breach. Ironically, although purporting to rely on these cases, which in fact require that the non-breaching party mitigate within a reasonable period of time, Highland argues not that UBS was required to dispose of the CDSs within a reasonable period of time after the breach but that it was required to hold them for months and, indeed, years, until the market improved. Highland thus asserts that UBS reasonably mitigated by "holding (as opposed to fire selling) fully performing interest and premium-bearing assets in the face of a dysfunctional market. . . ," and that "UBS's mitigation was not only reasonable, but required by law." (Ds.'s Post-Trial Memo., at 7.) Put another way, Highland does not identify a specific date or dates by which UBS was required to mitigate. To the contrary, without citation to any legal authority, Highland argues that UBS was required to hold the assets for an indefinite period, until the market improved, to minimize its losses.

The mitigation cases provide no support for Highland's assertion that UBS's disposition, months and years after the breach, of assets that it had a contractual right to retain, constitutes mitigation.[20] Rather, in claiming that it is entitled to "offsets" for the post-breach gains realized by UBS, Highland appears in effect to advance a measure of damages that is patently inconsistent with the fundamental tenet of the date of breach measure of damages—namely, that a non-breaching party's damages for assets with a determinable market value must be calculated

[20] Nor does Highland cite any other authority that supports its claim that it is entitled to offsets for post-breach gains realized by UBS. Cases in which a party has a duty to cover (see e.g. Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, supra) are inapposite, given UBS's contractual right to retain the CDSs upon the breach. Cases in which a party is on both sides of a securities transaction are factually dissimilar. (See Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, supra [where the plaintiff company breached a contract affording the defendant bondholders the right to convert their bonds to the company's stock, and the bondholders held open existing short positions in the company's stock on which they realized post-breach gains, the company was entitled to an offset]; see also Minpeco, S.A. v Conticommodity Servs., Inc., 676 F Supp 486, 490 [SD NY 1987] [holding that the plaintiff's losses on short futures positions on silver as a result of the defendants' manipulation of the market were required to be offset by the plaintiff's profits on physical silver positions also then held by the plaintiff].)

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

at the date of breach, not based on hindsight, and that neither party can select the date on which the damages calculation will be most favorable to it. Thus, a non-breaching buyer cannot select the date on which the assets "had their highest value or a period of time that was profitable but that excludes periods when losses occurred." (See Sharma, 916 F2d at 826.) Similarly, a breaching buyer cannot avoid or reduce the damages caused by its breach by invoking post-breach decreases in the value of the assets. (See id.)

The court accordingly holds that Highland's request for an offset for UBS's post-breach gains from the disposition of the CDSs must be denied.

Offset for Right of First Refusal Counterclaim

Highland Capital Management, L.P. (Highland Capital) seeks judgment on its first counterclaim against plaintiff UBS Securities LLC for breach of the Cash Warehouse Agreement provision affording it the right to purchase CLO assets in the event UBS elected to retain such assets upon the termination of the Agreement. Section 5 (A) of the CWA provides that in event of failure to close, "UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures." The Liquidation Procedures set forth in section 7 (A) of the CWA provide in pertinent part:

> "If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS's Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value."

Section 7 (A) further provides that if UBS elects to sell CLOs upon termination, "the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

the highest third party bid received by UBS for the purchase of such Collateral Obligation."

It is undisputed that Highland Capital notified UBS that it sought to purchase six of the CLOs with a bid price of $1.9 million and a notional value of $44 million, but that it sought to provide the funds for the purchase, and to settle the trades, in the name of one of its affiliates, CLO Value Fund. (Ds.'s Findings, ¶ 21.) UBS declined to agree to the sale to the Highland Capital affiliate. (Id.; DX 72; PX 292.)

The court is unpersuaded that a Highland Capital affiliate had the right, under the CWA, to purchase the CLOs. Section 7 (A), which governs the disposition of the CLO assets upon termination, expressly affords one UBS Affiliate the right to purchase CLOs. In contrast, this Section affords the right to purchase only to the Servicer, and not to any other Highland entity. The Servicer is defined as Highland Capital Management, L.P. (CWA, First Paragraph.) Reading the CWA as a whole, the court further finds that no other provision modifies or is inconsistent with this limitation. On the contrary, where the acts of Highland Capital's Affiliates were implicated, the CWA expressly referred to the Affiliates. (CWA, § 13 [B] [limiting the liability of the "Servicer" "for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders [and others] under or in connection with this Agreement, or for any decrease in the value of the Collateral Portfolio . . . ."].)[21] The court accordingly holds that the CWA unambiguously provides that the right to purchase retained CLOs is limited, among the Highland entities, to Highland Capital.

In view of this holding that the CWA is not ambiguous with respect to Highland's post-

[21] The parties to the transaction knew how to afford rights to purchase assets to Affiliates of the Servicer. The SWA provides that if the closing fails to occur, UBS may, with the consent of the related counterparty, novate CDSs "to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer). . . ." (SWA § 6 [A].) The omission from the CWA of authorization to Affiliate(s) of the Servicer to purchase CLOs is therefore notable. Moreover, Highland Capital does not claim that the concerns—regulatory and other—that are implicated in novating CDSs are comparable to those in selling CLOs.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

termination right to purchase CLOs, the court rejects Highland's contention that the court should consider evidence allegedly showing that UBS and Highland Capital had a prior course of conduct in which UBS permitted Highland Capital to settle trades "at its fund level." (Ds.'s Findings, ¶¶ 80-81.) Parol evidence of course of conduct is not admissible to construe an unambiguous contract. (See e.g. Sigismondi v Queens Transit Corp., 38 AD2d 71, 73 [2d Dept 1971], affd no opinion 32 NY2d 745 [1973]; Evans v Famous Music Corp., 1 NY3d 452, 459 [2004].)

The court further notes that even if Highland Capital could recover on its counterclaim, the damages it seeks are not recoverable. Highland Capital seeks a finding that because the CLOs continued to perform until maturity, "it would have profited $46 million" if it had been permitted to exercise its right of first refusal to purchase the CLOs. (Ds.'s Findings, ¶ 82; DX Demo. 9.) As Highland Capital acknowledges, however, the market value of the CLOs at the time of breach was $1,934,214. (DX Demo. 9.) The measure of damages, as explained above in connection with Highland Capital's claim for offsets against UBS's damages, is the market value of the assets as of the date of breach, not the increase in their value in the indefinite future.

Offset for Unjust Enrichment

Highland Capital also seeks judgment on its second counterclaim alleging that UBS was unjustly enriched by its failure to permit Highland Capital, through its affiliate CLO Value Fund, to purchase the Collateral Obligations upon termination. This claim for unjust enrichment is not maintainable as the right to purchase is governed by contract—the CWA. (See generally Pappas v Tzolis, 20 NY3d 228, 234 [2012], rearg denied 20 NY3d 1075 [2013]; Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388-389 [1987].)

Offset for Settlements with Highland Affiliates

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

Highland also requests an offset for settlements with three Highland Affiliates—Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Offshore), and Highland Crusader Holding Corporation (Crusader Holding) (collectively, the Settling Highland Affiliates). Credit Strategies and Crusader Offshore were defendants in this action. UBS asserted its fraudulent conveyance cause of action against them as well as all of the other defendants. (Second Am Compl., Fifth Cause of Action.) Crusader Holding was a defendant in a separate complaint, which asserted a fraudulent conveyance cause of action against it. (UBS Secs. LLC v Highland Crusader Holding Corp., Sup Ct, NY County, Index No. 652646/11, Compl., First Cause of Action; Ps.'s Letters, dated July 21, 2015 [NYSCEF Doc. No. 397]; Jan. 7, 2016 [NYSCEF Doc. No. 398].) This court bifurcated the trial of this action, directing that it would first hold a bench trial on the breach of contract claims, which were triable by the court and are the subject of this decision, and that the fraudulent conveyance and other claims, which are triable by a jury, would be heard subsequently. (May 1, 2018 Decision on the Record [NYSCEF Doc. No. 494].)

The parties dispute whether the confidential settlements (DX 76 id and DX 77 id) may be considered in this action. They also dispute whether the settlements may be offset, pursuant to statute or case law, against the damages awarded by this decision to UBS against the Fund Counterparties on the breach of contract causes of action. (See Ps.'s Post-Trial Memo., at 14-21; Ds.'s Post-Trial Memo., at 15-19, 21-24.)

Even assuming, without deciding, that the damages may be subject to offset by the settlements, the determination of whether or to what extent the offset should be allowed must await determination of the jury trial. Where an offset for a settlement is sought, "the damages against which the settlement is sought to be applied should be determined so a proper comparison can be made between them and the damages covered by the settlement." (Carter v.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

State of New York, 139 Misc 2d 423, 429 [Ct Cl, 1988], affd 154 AD2d 642 [2d Dept 1989]; accord Moller v North Shore Univ. Hosp., 12 F3d 13, 16 [2d Cir 1993] [applying New York law].)

Here, Highland argues that the causes of action against the settling defendants are "wholly derivative of its breach-of-contract claims against the Fund counterparties." (Ds.'s Post-Trial Memo., at 16.) UBS persuasively argues, in opposition, that the fraudulent conveyance causes of action seek relief in addition to compensatory damages, including imposition of a constructive trust and punitive damages. (Ps.'s Post-Trial Memo, at 22-24; Second Am. Compl., at 57-58.) Moreover, the damages, if any, that will be awarded against the Fund Counterparties and Highland Capital on the fraudulent conveyance cause of action remain to be determined at the jury trial. On this record the court accordingly cannot compare the settlements with the fraudulent conveyance damages. Nor is there any basis for the court to determine the extent to which the settlements cover the same damages, or damages that overlap with, the breach of contract damages awarded to UBS against the Fund Counterparties by this decision. The determination of the offset issue will therefore be deferred pending the jury trial. As it appears, however, that Highland may be entitled to an offset for some or all of the settlement amounts, the court will stay enforcement, to the extent of the settlement amount ($70.5 million), of the judgment to be awarded to UBS against the Fund Counterparties for the damages for breach of contract.

Conclusion

UBS is entitled to damages for $519,374,149 on the third and fourth causes of action against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements. Enforcement of the judgment for this amount will be stayed up to $70.5 million, the amount of the settlements with the Settling Highland Affiliates.

FILED: NEW YORK COUNTY CLERK 11/14/2019 04:03 PM INDEX NO. 650097/2009
NYSCEF DOC. NO. 641 RECEIVED NYSCEF: 11/14/2019

ORDER

It is hereby ORDERED that the parties shall meet and confer with a view to reaching agreement on the form of the judgment, including but not limited to the Allocation Percentages of CDO Fund and SOHC, and the award of interest. If the parties are unable to reach such agreement, they shall promptly settle judgment; and it is further

ORDERED that this decision shall be filed under seal for ten business days from the date hereof to afford the parties the opportunity to confer and to advise the court as to whether there is any information in the decision which is claimed by any party to be confidential. The parties shall, within five business days of the date hereof, submit a joint letter of no more than three pages, advising the court of their positions on this issue. The letter should be accompanied by a joint copy of the decision, highlighting the portion(s) of the decision which each party claims is confidential and should be redacted in the decision that will be publicly filed; and it is further

ORDERED that the parties shall telephone the court on a conference call within five business days of the date hereof (at a specific date and time to be arranged with the Clerk of Part 60) to discuss the above confidentiality issue as well as the jury trial phase of this action. The parties should be prepared to address whether, or to what extent, the jury trial may proceed in light of Highland Capital's filing of a bankruptcy petition.[22]

This constitutes the decision and order of the court.

Dated: New York, New York
November 14, 2019

MARCY FRIEDMAN, J.S.C.

[22] By letter dated October 17, 2019 (NYSCEF Doc. No. 640), counsel (Reid Collins & Tsai LLP) for Highland Capital, the Fund Counterparties and other Highland defendants, advised the court of Highland Capital's bankruptcy filing, and represented that the automatic stay does not preclude decision of the causes of action against the Fund Counterparties or the counterclaim by Highland Capital. This letter sought to reserve defendants' position on the effect of the bankruptcy filing on subsequent proceedings in this action.

EXHIBIT 6

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PATRICK DAUGHERTY,	:	
	:	
Plaintiff,	:	
	:	
v	:	C. A. No.
	:	2017-0488-MTZ
HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND EMPLOYEE RETENTION ASSETS LLC, HIGHLAND ERA MANAGEMENT LLC, and JAMES DONDERO,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
HIGHLAND EMPLOYEE RETENTION ASSETS LLC,	:	
	:	
Nominal Defendant.	:	

- - -

Chancery Courtroom No. 12D
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, May 17, 2019
1:30 p.m.

- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor

- - -

RULINGS OF THE COURT ON PLAINTIFF'S MOTION TO COMPEL AND MOTIONS FOR COMMISSIONS
ORAL ARGUMENT AND RULINGS OF THE COURT ON PLAINTIFF'S MOTION FOR STATUS QUO ORDER AND DEFENDANTS' MOTION TO DISMISS COUNT IX OF SECOND AMENDED VERIFIED COMPLAINT

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0533

APPEARANCES:

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for Plaintiff

JOHN L. REED, ESQ.
DLA Piper LLP (US)
-and-
MARC D. KATZ, ESQ.
of the Texas Bar
DLA Piper LLP (US)
for Defendants

- - -

THE COURT: Good afternoon. Please be seated.

First I wanted to acknowledge, we have an honored guest with us today. We have the Honorable Essam Yahyaoui, who is a judge from Tunisia. He presides over the commercial chamber of Tunisia's First Instance Court. So he's here to observe with his colleagues.

Welcome, sir.

All right. I'm going to start with the motion to compel, and then we'll move on to the motion for commission. And then there may be questions, and maybe take a break and regroup and we can move on with the other motions.

I'm going to grant Daugherty's motion to compel in part. For simplicity, I'm going to refer to Abrams & Bayliss as A&B. And I see four categories of documents at issue here. The first is regarding the initiation, negotiation, and establishment of A&B as Highland's escrow agent. The second is regarding A&B's legal work during the pendency of the Texas action to determine whether and how Daugherty might access the escrowed assets. The third is A&B's work responding to the Texas subpoena. And the fourth is

documents regarding A&B's resignation as Highland's escrow agent.

I grant the motion to compel as to Categories 1, 2, and 4 for one of two reasons.

The first reason is unfortunately my *in camera* review confirmed Daugherty's fear that Highland is improperly withholding documents in Categories 1 and 4 illustrating A&B's service and resignation as escrow agent, which are nonprivileged materials.

In a hearing on September 18, 2018, concerning an earlier subpoena, Vice Chancellor Glasscock stated that "... information regarding the actions of Abrams & Bayliss in connection with its operation of the escrow as agents of Highland, HERA, those documents, that information is relevant, and it doesn't appear to me to be generally privileged." That's a quote from the transcript.

Highland has been adamant that it was only withholding documents that implicated its role as legal counsel, and not in its role as escrow agent. For example, on page 28 of the transcript from the April 12th argument, Highland's counsel stated that, "We do not assert any privilege based solely on Abrams

& Bayliss's roles as escrow agents. It's purely because they have the dual roles both as escrow agents and also legal counsel, that when they were in the capacity of legal counsel, those communications were privileged."

At that argument, I requested the documents and stated I would review them *in camera*. I expressed my frustration that I had already given Highland multiple chances, and invited it to redo its privilege log for a final time.

In reviewing the documents, I concluded that more than 70 documents that were withheld based on claims of privilege or work product protection were improperly withheld. Those documents were Privilege Log No. 1 through 25, 27 through 29, 35, 36, 41, 54, 56, 62, 85 through 87, and 336 through 372.

This represents nearly 20 percent of the 372 documents in the log. But even that doesn't tell the full story, because more than 200 of the listed documents were simply attachments to e-mails collecting documents in response to the Texas subpoena. Excluding those, more than 50 percent of the documents listed were improperly withheld as

privileged.

Documents regarding A&B's nonlegal work and resignation as escrow agent are not privileged or work product because when A&B agreed to be an escrow agent, it stepped into a nonlegal role despite its status as a law firm.

The cases are clear on that point. *Northeast Credit Union v. CUMIS*: "It is well understood ... that the services of an escrow agent, even when that escrow agent is an attorney, are not legal services." *CCS Associates v. Altman*: "[C]ourts have specifically held that an attorney in the role of escrow agent does not transform communications pertaining to the administration of the escrow account into privileged documents." The first case is from the District of New Hampshire, and the second one is from the Eastern District of Pennsylvania.

These non-Delaware decisions more specifically enunciate a principle common in our own law. Including an attorney, or having an attorney perform nonlegal work, does not attach the privilege to the communications or the work. That is because "... the attorney-client privilege protects legal advice only, [and] not business or personal advice."

That's a quote from *MPEG v. Dell* from this court in 2013.

And as Vice Chancellor Laster said in the *Facebook Class C Reclassification* litigation, "Making the lawyer the point person creates a pretext for invoking the attorney-client privilege, but it is only a pretext." That's from his December 12th, 2016 order in Case No. 12286-VCL.

Categories 1 and 4 reflect communications between A&B and Highland concerning the start of the escrow relationship, or A&B resigning as escrow agent. To be sure, there were legal ramifications and issues regarding the work A&B was doing in setting up and then ending the escrow relationship. But any legal component of A&B's escrow-related work was secondary to the role as escrow agent. A&B was a contractual counterparty with Highland under the escrow agreement, and each had obligations under that agreement.

A&B did perform legal work on the escrow issue. For example, A&B attorneys analyzed what document 351 on the log calls the "HERA Strategy." But that legal advice was not for the benefit of Highland, who was A&B's contractual

counterparty. A&B could potentially claim that its attorneys were providing legal services to A&B as escrow agent. But that is not what is before me; A&B has claimed no privilege. The only issue is whether Highland can claim a privilege and withhold the communications containing A&B's legal analysis regarding its service as escrow agent.

I think an example here might be helpful. If Highland had retained a bank or other repository to act as escrow agent rather than a law firm, the result would be more clear. If the employees of that non-law firm escrow agent communicated internally about the relationship or the contract, it would not be privileged.

If those employees received legal advice from attorneys about how to structure the escrow, what the terms of the escrow agreement meant, or how it could fulfill Highland's request to unwind the escrow and transfer the assets back, Highland could not claim that the in-house or outside counsel retained by the escrow agent was providing legal advice for Highland's benefit. It would be much clearer that the attorneys were providing legal advice to, and for the benefit of, the escrow agent, not its

contractual counterparty, Highland.

The facts here are more muddied because there are only lawyers involved because Highland selected a law firm, that otherwise represented Highland, to act as escrow agent. But the result should be the same. A&B's privilege over its in-house advice regarding its conduct under the escrow agreement does not belong to Highland just because A&B is itself Highland's attorney.

The next question is one of remedy for improperly withholding so many of the documents as privileged. Waiver "... has been characterized as a 'harsh result' typically only justified 'in cases of the most egregious conduct by the party claiming the privilege.'" That's from *TCV v. TradingScreen*.

"If a party falls substantially short of the well-established requirements, then waiver is an appropriate consequence that helps dissuade parties from engaging in dilatory tactics." That's from *Mechel Bluestone v. James C. Justice Companies.*

Daugherty has been dogged in his pursuit of these documents, and Highland was just as resolute in refusing to produce them. Vice Chancellor Glasscock said last September these types of documents

are not privileged. I gave Highland multiple opportunities to address this. Because Highland stuck by its position and continued to assert such a large percentage of improper privilege assertions while claiming it was producing documents concerning A&B's role as escrow agent, any privilege related to that topic is waived, and a full waiver of Highland's privilege could be an appropriate consequence.

But I am reluctant to go that far because Categories 2 and 3 were properly withheld and logged adequately. Category 2 relates to a memorandum A&B prepared analyzing avenues available for Daugherty to pursue the escrowed assets. This work started in February 2014. Category 3 relates to efforts to collect documents in response to the subpoena for the Texas case. I conclude Highland's unjustified withholding of other documents related to the escrow was not so egregious as to waive any privilege over these two sets of documents.

This brings me to the crime-fraud exception. If Categories 1 and 4 were privileged, I would conclude that the crime-fraud exception applies and so A&B should produce those documents regardless. I reach the same conclusion for Category 2, the subset

of documents related to A&B's 2014 memorandum that were privileged and properly logged.

Rule of Evidence 502(d)(1) says that "There is no privilege ... If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud."

To fall within this exception, "... a mere allegation of fraud is not sufficient; there must be a prima facie showing that a reasonable basis exists to believe a fraud has been perpetrated or attempted." That's from *Princeton Insurance Company v. Vergano*. That case also explains that "... when a client seeks out an attorney for the purpose of obtaining advice that will aid the client in carrying out a crime or a fraudulent scheme, the client has abused the attorney-client relationship and stripped that relationship of its confidential status."

The client must intend the communications to be used as a bases for the fraud. "The advice must advance, or the client must intend the advice to advance the client's ... fraudulent purpose." That's from *Buttonwood Tree Partners v. R.L. Polk*.

As Chief Justice Strine wrote while Vice Chancellor in *Princeton Insurance v. Vergano*, "The quintessential circumstance [when this exception applies] is when the client obtains the advice of the lawyer in order to help shape a future course of criminal or fraudulent activity. This is the classic situation when the privilege gives way, as the societal purpose of the confidential relationship has been entirely subverted, with the client seeking the expertise of someone learned in the law not so as to comply with the law or mitigate legitimately the consequences of his prior behavior, but to craft a course of future unlawful behavior in the most insidiously effective manner."

Here, there is a reasonable basis to believe a fraud has been perpetrated. Daugherty's claim for fraudulent conveyance survived a motion to dismiss, and I will refer the parties to Vice Chancellor Glasscock's January 16, 2018 opinion on that point.

The question is whether Highland sought the services of attorneys to enable or aid it in furtherance of that fraud. I believe there is a reasonable basis to believe that as well. Highland's

attorney at Andrews Kurth contacted A&B almost immediately after the Texas judgment became final and nonappealable. That's at Exhibit K.

Highland claims A&B then provided it legal advice interpreting the escrow agreement, and A&B resigned as escrow agent intending to cause, and in fact causing, the assets to return to Highland/HERA. That is the transfer that Daugherty claims was fraudulent.

This was not the first legal work A&B performed in pursuit of keeping the escrowed assets from Daugherty. Starting in February 2014, it analyzed Daugherty's ability to get at the assets while the appeal was pending. Because that appears to be the beginning of the efforts that culminated in the allegedly fraudulent acts, the crime-fraud exception strips the privilege from these documents.

Daugherty has made a *prima facie* showing that a reasonable basis exists to believe that a fraud has been perpetrated, and that Highland sought A&B to serve as escrow agent and to provide legal analysis in furtherance of that fraud; specifically, to protect the escrowed assets from Daugherty while the Texas case was pending, and then to transfer them

back to Highland after the Texas verdict was finalized. I conclude any privilege Highland claims over A&B's legal advice regarding the escrow arrangement and A&B's resignation has been stripped under the crime-fraud exception.

I want to be clear on what I am not saying. I am not saying that a fraud claim merely surviving a motion to dismiss permits the supposed victim to invade the defendant's privilege for any legal advice the defendant received in regards to the underlying transaction or act. This is a unique case in which it presently appears that the law firm that provided the legal advice, one, was a contractual counterparty to the defendant in the very contract under which the fraudulent transfer was allegedly made; two, provided legal advice interpreting that agreement and charting the course for the transfer; and, three, implemented its own advice to effectuate the transfer.

On these allegations, which are supported by the documents I have reviewed, it appears the defendant sought the firm's legal advice to further the alleged fraud based on the terms of the contract to which the defendant and the firm were

parties. Based on these uncommon facts, the crime-fraud exception applies here.

Accordingly, the privilege is either nonexistent or waived as I just described for Categories 1, 2, 4; in other words, all documents regarding A&B's service as escrow agent. The crime-fraud exception also applies to documents in these categories designated as work product, under *Playtex v. Columbia* out of the Superior Court.

I find that Category 3, regarding the Texas subpoena, was properly logged as privileged, and that the crime-fraud exception does not reach those documents. Daugherty has not alleged that the subpoena response was in furtherance of the fraud. Category 3 comprises the families associated with lines 91 through 327, which are the parent e-mails attaching documents collected in response to a subpoena.

Mr. Katz, is any of that unclear?

MR. KATZ: No, Your Honor. It's clear.

THE COURT: Mr. Uebler, any questions?

MR. UEBLER: No questions, Your Honor. Thank you.

THE COURT: Thank you.

We'll turn to the motion for commissions.

Daugherty seeks commissions to take the depositions of James C. Bookhout and Marc D. Katz, both of DLA Piper. I will refer to Mr. Bookhout and Mr. Katz collectively as "the requested deponents." Both requested deponents represented Highland in its dispute with Daugherty in Texas, beginning in 2012, and Mr. Katz and his colleagues at DLA represent Highland in this action as well. Daugherty seeks fact testimony from the requested deponents on five topics, all pertaining to the events surrounding the escrow as alleged in Daugherty's operative complaint.

The discovery Daugherty seeks is clearly within the bounds of Court of Chancery Rule 26. And, based on the privilege log Highland produced for the escrow-related documents, the requested deponents have personal knowledge of at least some of the escrow events.

The parties disagree on the threshold standard for evaluating whether counsel can be deposed. Highland contends this court has adopted the *Shelton* test, while Daugherty points to a series of

standards from *Rainbow Navigation*, *Sealy Mattress*, *Kaplan & Wyatt*, and *Dart*.

I note that in a transcript ruling from 2018 in *LendUS, LLC v. Goede*, Vice Chancellor Glasscock considered in the first instance whether it was necessary to gather the evidence sought from counsel, given the risk of disqualification. I agree this is a threshold consideration present in all the cases the parties have cited. And I conclude, like Vice Chancellor Glasscock did in *LendUS*, that Daugherty has not made a sufficient showing that he needs to depose Mr. Bookhout and Mr. Katz at this juncture.

As I just explained in my ruling on Daugherty's motion to compel, Daugherty will receive A&B's documents regarding the escrow. Daugherty can also depose the escrow agents. He can depose the Highland principals who were involved. And I do not see that any of this has happened yet. He should pursue those avenues before pursuing one that jeopardizes Highland's choice of counsel. His motions for commission for the proposed deponents are denied without prejudice.

I am mindful that trial is scheduled

for September, and that -- if Daugherty renews his motions after taking the rest of the fact discovery -- the risk of disqualification carries more prejudice to Highland the closer we get to trial. I also note that the discovery cutoff in this case is June 28, 2019. I am, therefore, interspersing an intermediate discovery cutoff.

Escrow discovery, including depositions of fact witnesses other than the requested deponents, must be complete by June 14th, 2019, and Daugherty must make any renewed motion for commission by June 17, 2019, with briefing on that motion to be expedited.

The burden this timeframe places on both parties I think is appropriate in light of the requested deponents' apparent knowledge of significant aspects of Daugherty's allegations, and in light of the desire to protect Highland's choice of counsel. Any renewed motion by Daugherty must demonstrate what gaps in the record he needs to fill, and why he believes the requested deponents can fill those gaps.

Mr. Uebler, is any of that unclear?

MR. UEBLER: Your Honor, nothing is unclear about that ruling, but I do have a question

about the escrow agent depositions. Can the parties assume that the ruling that the Court has made with respect to the documents will also apply to deposition testimony? in other words, categories that may be subject to privilege such as the subpoena response, but all other escrow-related categories would presumably be fair game and not subject to privilege in a deposition?

THE COURT: That's correct, at least as to A&B. I note that we haven't really tested the boundaries of where my ruling might go with regard to DLA. And I think that's probably another conversation we would need to have.

MR. UEBLER: Understood. Thank you.

THE COURT: Thank you.

Mr. Katz, is any of that unclear?

MR. KATZ: No, Your Honor. That's clear.

THE COURT: I'll give you-all maybe ten minutes to kind of regroup a little bit, and then I'll hear the motion for status quo order first.

We're in recess.

(Recess taken from 1:53 p.m. until 2:00 p.m.)

THE COURT: Mr. Uebler?

MR. UEBLER: Your Honor, my colleague, Mr. Christensen, is going to argue the status quo motion. But I'd just like to point out, we had an issue with our File & Serve converting Word documents to pdf, and it would drop the occasional citation in footnotes. I don't know if it's our system or theirs. But, in any event, we've brought revised copies of our papers with all the citations for the Court.

THE COURT: Thank you.

MR. UEBLER: You're welcome.

MR. CHRISTENSEN: Good afternoon, Your Honor. Joseph Christensen from McCollom D'Emilio for the plaintiff, Pat Daugherty.

I just want to start very briefly with how we got here. Your Honor is familiar with the facts, so I won't go over that in too much detail. But I do want to highlight some of the additional points that we included in our briefing related to what Highland was saying about these assets during the Texas action.

So Thomas Surgent, during the Texas action, he was the chief compliance officer of Highland. During the Texas action, he testified that the assets listed in the escrow agreement were being

held for Pat's benefit for his interest in HERA. These are all from Exhibit V. That one is at page 15 of 53.

Jim Dondero, the head of Highland, testified that Pat's share of all the assets, including the cash, is in escrow. He also testified that Pat's *pro rata* share of all the assets, including the cash, are all sitting in escrow. There's been nothing deducted or removed from Pat's account. And he also said that the escrow agreement was to protect Pat Daugherty.

The point of all these statements was to convince everybody who would listen that these assets were being held for Pat Daugherty, and that if he prevailed in the Texas action, he would obtain those assets. And we haven't done anything with them. We haven't offset any legal expenses, which is also noted in our reply brief.

Coupled with the statements that Pat continued to hold the HERA units, this was a clear expression that Highland was trying to convince people that they intended to hold onto these assets but give them to Pat if he prevailed in the Texas action.

In HERA's closing argument its counsel

said, "If Pat Daugherty happens to prevail in his lawsuit against Lane, Patrick and HERA you heard Jim Dondero testify he gets his interest, which is currently escrowed in the third-party escrow account, all of it."

And the jury clearly believed that the escrow meant to preserve Daugherty's interest. One of the questions the jury sent back to the judge in the Texas action referred to his -- that is Pat's -- HERA units currently in escrow. That's the third to the last page in Exhibit U.

The defendants now say, "Well, sure, Pat continued to be an owner of HERA, but there was never anything in HERA, at least during the Texas action and before the Texas action." Which reminds me of a scene from my life at a movie theater with my two sons, where the younger one was complaining that his brother wouldn't give him the box of candy. He asked me to intervene, and I told him to give him the box of candy, at which point the older brother emptied the candy into his popcorn and gave him the empty box.

That's exactly what happened here. When they told everyone they were holding assets for Pat's benefit, they would now have you believe that

what they really meant was that he was just entitled to an empty box, and they had no intention -- and Pat should have known that they never had any intention of ever letting him have them.

There are two possibilities to explain the contrast between what they said during the Texas action and what they're saying now. One is that they knew at the time that they were never going to give them back. The other is that they believed at the time and were sincere in saying that they would give them back, but they later changed their mind.

Under either of those circumstances, Daugherty prevails on at least one of his claims. If they changed their mind but initially intended it, his promissory estoppel claim is very strong. If they never intended from the beginning to give them to him, then his fraud and unjust enrichment claims are equally strong. The status quo order should be entered to make sure that they can't do either of those things this time.

I think that's all the background we need, except for a clarification on what Daugherty is seeking. He is seeking those assets. His relief -- Your Honor will note that we did not include in our

briefing any discussion of our claims for indemnification. Our indemnification claim is effectively a monetary relief sort of claim. But we did discuss promissory estoppel, unjust enrichment, and fraudulent transfer. Each one of those theories includes potential relief divesting those assets from whoever holds them, which brings me to the next point, which is that we do not know where these assets are.

We have asked the defendants where these assets are; were they ever transferred after December 2016. They told us they would not provide any information on those requests. And that's at our Exhibit L, Request No. 8 and 11, and Exhibit W, our Request No. 34 and 37.

THE COURT: I'm certainly not inviting more or different motions. But isn't the remedy for that a motion to compel instead of a motion for a status quo order?

MR. CHRISTENSEN: It would be. And we are not seeking through this status quo order effectively a back door to answering these requests for documents and interrogatories. But the fact that they will not tell us where these assets are is consistent with the prior behavior in the Texas action

and gives us a lot of pause about waiting until the end of this trial.

So we started out this case with -- I guess I should first turn to the defendants' argument that the Court doesn't have power to enter this status quo order. Clearly it does. The kind of relief that we're seeking is in aid of the ultimate relief that we are seeking. Because we are trying to obtain or move particular assets, we are seeking the status quo order to make sure those assets are still available for the court to issue an effective ruling at the end of this case.

THE COURT: And how do you get around the *Hillsboro* and *HEM* cases that discourage intermediate injunctive relief for the purpose of preserving assets?

MR. CHRISTENSEN: Well, I think generally the cases are referring to when you're seeking monetary relief. And that's not what we're doing in this case. And I think the history is probably the most important point in this situation.

One simply cannot ignore that the very assets and the very parties in this litigation -- the reason we're here is because we were chasing after

these assets that we believe we obtained the right to in the previous action. So it's a unique situation. None of the cases involve the same parties and the same assets.

And the cases -- even the cases that have history as a basis for granting the status quo order, none of them have this kind of sort of clear evidence that there was a fraud and moving of assets to defeat a judgment in an earlier iteration of the dispute between the parties.

THE COURT: And how does that sort of long history or long series of allegations of fraud and hiding assets, how does that square up with the requirement that the harm to be prevented by the status quo order be imminent?

MR. CHRISTENSEN: The imminence, Your Honor, to be frank, is probably the most difficult aspect of our situation to square with the law. Because -- in part because they haven't told us whether things have been transferred, where things are, we cannot give Your Honor very many facts about some imminent action that is going to take place.

But at the same time, we -- again, we started as a frog in a pot at a very high temperature

having come out of the experience in Texas. Then adding to that was the fact that they will not tell us where these assets are. They will not tell us whether they are currently in a solvent entity or not. They will not really just come out and say whether those assets are still in Highland or not. There's a suggestion in their brief that can be read as a representation that they are in the Highland and never have left, but they also make the argument in their brief that the assets never went over to Abrams & Bayliss; that during the whole time that Abrams & Bayliss was holding the assets, that really Highland held the assets, retained legal title, and Abrams & Bayliss was simply holding onto them in trust. We don't know if something like that is happening in this case either.

On top of that, we had -- and what spurred us to action was the affidavit of Highland saying that they did not have current assets to satisfy the judgment in the *Crusader Redeemer* action. So that's on the front end of that judgment. We, at this point, don't know what Highland is going to look like from a solvency standpoint on the back end of that after those assets have gone out the door, and so

at some point we have to act. We need to act before the end of this case.

We didn't believe that we had enough imminence at the beginning of this case that we would get a status quo order or a preliminary injunction. But when they filed that affidavit saying that in a cash flow basis they were insolvent for purposes of satisfying a judgment, against the backdrop of all the history, it starts to look like we're doing a replay of what happened in Texas.

Your Honor referred to, I think, a memo from Abrams & Bayliss talking about the HERA strategy. And what we're afraid of is that there is a HERA Strategy Version 2 that we do not know about right now and they just won't tell us. So at some point, in order to avoid them doing the same thing again, we have to act. We can't, unfortunately, identify when they're going to do that in the same clean kind of way that one often can in a status quo or preliminary injunction case. But the danger, I would submit, is just as high as in those cases.

I've talked some about the history. And the defendants do talk about three of the cases that we talked about regarding the history. They

address the *Crusader Redeemer* action that Your Honor is familiar with, the *UBS* litigation, and the *Acis*. The ones that they don't mention are *Trussway*, for example.

Trussway, in this court under Vice Chancellor Glasscock, he actually already found that the kind of history that one would have to establish to obtain a status quo order was found with respect to these principals. He said he took into account the "... prior history of the controllers of the entities in examining equitable matters that come before us." And true to the way he is, he said, "... I would just as soon not list all the reasons I have that make me suspicious that a remedy will not be available here ...." "But I think it suffices to say that I have experience with other cases involving the principals here." And he went on. That's from page 40 of Exhibit S, which is the transcript in the *Trussway* action.

On the next page he said that, "... given ... some of the factors that I've mentioned, including the Acis bankruptcy and my other experiences with the principals here ... there is a reasonable probability that without some action, any victory will

be a Pyrrhic victory."

THE COURT: It sounds like what you're suggesting is that given the track record of Highland in this action and in other actions, that you're suggesting that the imminence requirements be dispensed with because of what's going on here.

MR. CHRISTENSEN: I don't think I would say that, Your Honor. I would say that given the caginess on discovery, we are not able to identify the moment of imminence. But we are, through the history, able to establish the same point as imminence.

Imminence is this -- the point of addressing imminence is that if you don't address this, it is going to happen, and it's going to happen very soon. We can't tell you that it's going to happen very soon, but we can tell you that there's every reason to believe that it will happen before the end of this trial.

THE COURT: But what about the -- I think many times when one is considering imminence, there's sort of a *laches*-esque element that comes into it. And this case was filed in 2017. So this "it" that we're discussing very well may have already

happened.

And so I wonder what the justification is for sort of after the fact -- maybe, I don't know -- after the fact then seizing up Highland simply based on the way that things have played out in other cases.

MR. CHRISTENSEN: So I think I can explain why we didn't act earlier, and why it wouldn't have been justified to act earlier, and so why we shouldn't be subject to *laches* on this argument.

When we started, we had no reason to believe that those assets had gone anywhere other than Highland. Then the Acis bankruptcy discussed that Dondero was moving out tens of millions of dollars to his charitable foundation. That was another brick in the wall. Then we got the discovery responses that were not responsive.

And to be clear, we have not given up on that. We had a meet-and-confer as recently as this morning, and one on Friday of last week, in which we are trying to get these documents. It doesn't appear that we're going to have much success on our own. But we are absolutely pursuing that and have pursued those documents as vigorously as we pursued the Abrams &

Bayliss documents.

To mix the metaphors, the straw that broke the camel's back was the *Crusader Redeemer* action where Highland said: We cannot pay this judgment right now. We have more assets than liabilities, but we cannot pay this right now.

And it's also important to remember that it's not just large judgments that Highland has a history of not paying, and it's not only Daugherty's relatively small judgment that they refused to pay. But in the Acis bankruptcy, it was an $8 million claim at issue, and they made him go through -- or are still going through involuntary bankruptcy.

So I think we acted when it was prudent to act. And before that occurred, I don't think any member of this court would have been likely to give us relief without something to point to, a reason to believe that Highland wouldn't pay apart from the history.

THE COURT: And the reason is that affidavit in the *Redeemer* case stating that Highland doesn't have the liquid assets to pay the $175 million judgment? That's what you're interpreting to say that they will not pay or will somehow manage to avoid

paying Mr. Daugherty's -- what is allegedly owed to him?

MR. CHRISTENSEN: We aren't sure about the damages, but effectively, yes. That Highland -- which is, we assume, the most solvent of any of the entities -- now has a cash flow solvency issue. And so at that point we felt we needed to act.

THE COURT: Understand.

MR. CHRISTENSEN: The other thing that I think Your Honor should consider, it doesn't fit exactly within the three factors of a status quo or a preliminary injunction standard; but I think Your Honor should also take into account that it may not be a question of whether or not Highland is able to satisfy the judgment, but whether it will, even if it is able.

THE COURT: That's what I'm wondering. That's the part that I'm wondering how that's being derived from the affidavit in the *Redeemer* case, if that's the precipitating factor. Am I understanding you to read that affidavit only to inform solvency and not intent?

MR. CHRISTENSEN: It is consistent with an intent to make people work for their

judgments, but I mostly consider it separately. And what I'm really referring to, the short name for it is spite. It appears, if you look, not only at the previous action in Texas, but also the Josh Terry situation, that a major factor motivating whether or not Highland pays judgments is how Highland feels or how Jim Dondero feels about the people who are trying to collect that judgment.

And so you have the court in the bankruptcy case in *Acis* said that the expenditures were out of whack versus what's at stake. Or in the *Credit Strategies Fund* case -- which the defendants did not address -- the factual findings there refer to some notes from a call between those parties and Dondero. Those notes read, "Dondero directly threatens Concord and Brant personally. We are very good at being spiteful."

And so that spite doesn't -- it's not one of the factors normally considered on a status quo motion or a preliminary injunction. I do think, as a matter of equity, Your Honor ought to consider that. And I think it's consistent with, and maybe grows out of the kind of considerations that Vice Chancellor Glasscock was taking into account in the *Trussway*

action.

I think I'll skip to likelihood of success on the merits. We do think the likelihood of success on the merits prong of this analysis is fairly straightforward. At a big-picture level, Daugherty had a claim on these assets, either directly or through HERA. He was entitled to that compensation, he earned it, and it was taken from him after he proved his entitlement not only to damages -- which he received in the amount of 2.6 million and has never seen, but also the underlying assets.

So for fraudulent transfer purposes, we think actual intent to hinder, delay, or defraud based on the documents that we have seen so far is compelling evidence that there was actual intent to hinder, delay, or defraud.

Your Honor only has to find that we have a reasonable probability of success on one of our claims. You do not have to decide that we have a reasonable probability of success on all of them. And that comes out of the *Destra Targeted Income* case.

But we also think our other claims are quite strong, the alternative bases under fraudulent transfer law. We do not believe that HERA got

equivalent value, for example, in the transfer. Unjust enrichment, it's an equitable doctrine, so in some sense you back away and look at what really happened, what's the substance.

And again, what happened was Daugherty earned compensation, he proved his entitlement to it, and then it was taken from him. That enriched Highland; it impoverished Daugherty to the extent that he was entitled to it. There was obviously a connection between those two results.

And as far as their defense of justification, the evidence doesn't seem to show that. I take their justification argument to mean that they were justified in taking the money because of the legal expenses. But the bills that we have seen so far do not support that HERA was receiving the benefit of those legal expenses.

And just briefly on the promissory estoppel claim -- I'm not going to spend much time on that; you'll hear a lot about that in a minute. But I do want to refer to those quotations from the Texas trial as additional reasons that support our probability of success on the merits of that claim. They demonstrate that throughout the trial, the

strategy appears to have been to convince the jury that Highland was the good guy because they were -- don't worry, they're going to hold on to the assets for Pat. Pat is going to get those assets if he proves his entitlement to them. But -- you know, so don't think we're bad for taking them. Tell us that we win now and we don't have to give them to him.

The narrowest way to grant the motion, I think, is based on probability of success of the fraudulent transfer claim for actual intent to hinder, delay, or defraud. And Your Honor only needs to find that to issue the status quo order.

On the balance of equities, also seems very clear to us. On the one hand, our client would go through potentially another half a decade or decade of litigation if he has to chase these assets again. And it would be a real shame to have to do that twice. On the other hand, the defendants, the harm that they identify on their side is that it would lower the bar for future plaintiffs against Highland that are seeking monetary damages to obtain a status quo order. And on that point, I just have to point out, again, that it is not only monetary damages that we are seeking, but seeking to move the escrow assets.

The other harm that they identify is the harm to their reputation if they're required to freeze these assets for what I take them to perceive as a very small claim. But again, we're not only seeking monetary assets, so this is not just, as they characterize it, a $3 million claim but a claim on specific assets. And their history of paying small claims is not great. So we think the balance of equity also favors Daugherty.

Unless Your Honor has any other questions, that's all I have.

THE COURT: I don't. Not at this time. Thank you.

MR. REED: Good afternoon, Your Honor. John Reed from DLA Piper for the defendants.

First of all, I want to apologize for what happened at the last hearing. We were only into the case for like two days. I had no idea that the lawyer that was going to present was not going to be able to answer Your Honor's questions. I was not happy about that, probably much more unhappy than the Court was and the Court was very unhappy.

Mr. Katz is the lawyer most familiar with everything in this case. And he's here today to

present the arguments and should be able to answer all of Your Honor's questions.

THE COURT: I appreciate your comment. Thank you.

MR. KATZ: Your Honor, may I approach?

THE COURT: Yes.

MR. KATZ: Thank you for letting me be heard today.

And as Mr. Reed said, I echo his apologies for the last hearing. I apologize that I was not able to be here at that last hearing. But if Your Honor does have questions about -- I understand Your Honor's ruling, but if Your Honor does have questions about any of those matters, I'm happy to address those as well.

THE COURT: Thank you.

MR. KATZ: With respect to the status quo motion. Obviously, the Court is aware of the legal standard. I'm not going to go into that. I just want to address a few of the points that counsel addressed.

And I'd like to start with the irreparable harm element, which is one of the required elements. And counsel said a number of times that

they're seeking the assets, not just monetary relief. And I presume that that argument is being proffered because they recognize, otherwise, the issue with irreparable harm component that they have to show.

And I note, just by way of background, is that the Texas award was not in favor of Mr. Daugherty vis-a-vis HERA. It was not for specific assets; it was a monetary award. And, moreover, Mr. Daugherty never had ownership of -- direct ownership of any assets in HERA. Mr. Daugherty was a shareholder in an LLC and the LLC owned some assets.

So if their lawsuit is now seeking recovery of specific assets as opposed to monetary relief, I note that there's a host of procedural and substantive issues with that which I think goes well to the likelihood of success on the merits.

But the point for us today, Your Honor, is that a monetary award would certainly be sufficient to recompense Mr. Daugherty if he were to prevail on any of his claims in this case. And there's no evidence -- and maybe more importantly, there's no evidence that's been offered to the Court in support of the status quo motion that would demonstrate otherwise. And when I say "demonstrate

otherwise," demonstrate that there are assets that were in HERA that can't be valued, or some other basis to show some sort of irreparable harm. That issue is not even addressed.

We're -- this is, I think, very apparently a case that -- where there is no irreparable harm. And money can certainly compensate for any harm that Mr. Daugherty may be able to prove ultimately that he suffered. The only evidence on that issue, I think as Your Honor correctly pointed out, was the affidavit of Scott Ellington. And that affidavit says to the contrary. It says, "... the value of Highland's assets exceed[s] the amount of the ... Award."

There's absolutely no evidence in connection with the status quo motion that would show that there is irreparable harm or there is insolvency. In fact, what a good counsel wants to do is make allegations of what they believe is inappropriate conduct some by Highland, some by Highland's affiliates. And I note that the conduct that they've cited to in their motion are allegations taken from pleadings in other cases, as opposed to direct evidence of anything that has been done by Highland.

And most of it, again, is not directly Highland allegations to any extent.

There is -- and then also as Your Honor appropriately, I believe, questioned counsel about, there's no evidence of anything imminent on the horizon that might give rise to any potential concern that would support the status quo order. And what they're seeking is really, truly an extraordinary remedy. And I don't believe that they've pointed to any concrete basis which they can meet the high standard that they need to show to justify a status quo order.

THE COURT: How do you justify the situation here from the one in *Trussway*?

MR. KATZ: Well, I guess, Your Honor, in two ways. One, in *Trussway*, there's allegations of specific conduct. Where here, we've got -- there's no allegations of any conduct that they believe is about to occur or evidence to support that.

THE COURT: I suspect they would say that's because you haven't answered their questions, but I don't know.

MR. KATZ: Well, but, Your Honor, I guess that it would also go back to the irreparable

harm issue that, you know, there's nothing that -- even the allegations, that if they were able to provide some supportive allegations in this case as opposed to relying on allegations in other cases, there would still be -- they still have not shown that there's any risk of insolvency or potential irreparable harm.

And the *Mitsubishi* case that they cited in their brief I think is very on point. And on this issue where they had -- the Court noted that there was an allegation -- actually more than an allegation -- there actually was a prior incident that the Court had very serious concerns about but that on its own wasn't enough. It was -- the Court specifically found that the defendant in that case was insolvent. And they also found that there was a sale being negotiated, actual evidence of a sale, where the assets were going to be transferred. But we don't have that type of evidence with us in this case, Your Honor.

On the likelihood of success on the merits, Counsel spent a little bit of time on that issue. But I think it's important, Your Honor, again, that this is an extraordinary remedy they're seeking

that has a heightened standard. And their motion on the likelihood of success on the merits simply has conclusory allegations, that they believe they're going to be able to prevail on the merits without addressing the specific elements and what evidence they've got to show the specific elements.

I note, you know, Counsel, in a number of pleadings has -- and I know Your Honor has noted this as well -- that Judge Glasscock had expressed his skepticism about when he was trying to determine what the nature of the escrow agreement was. And I note that Judge Glasscock, when he was doing that, also when he was talking about the formation of the escrow agreement, he was not talking about the resignation of Abrams & Bayliss or the -- what happened to the assets that formerly were held by HERA.

And, in fact, even Judge Glasscock indicated at that time that it may be that this fraudulent transfer claim was appropriate for summary judgment. I think his direct quote -- I know I wrote it down. His direct quote was that it wasn't prepared -- on page 79 and 80 of the transcript, that, "It may be ... perfectly fit ... for a motion for summary judgment. I'm just not convinced I can get

rid of it on a motion to dismiss ...." That was his quote.

But I think that has been turned on its head a little bit to say that because he didn't understand the purpose of the escrow agreement and why that was formed, that somehow that shows that the fraudulent transfer claim is a sure-fire winner. In fact, I also note that Judge Glasscock dismissed the same fraudulent transfer claim against Mr. Dondero in the motion to dismiss.

So we think there's a number of problems with each of the claims. And I know we're going to get to the promissory estoppel claim. But I think a couple of issues with that is that we've got -- that claim is predicated on two statements that were by individuals that I don't believe were clear and unequivocal type of statements that could support a promissory estoppel claim. But moreover, they went to the representation of what was in the terms of the escrow agreement.

And I believe the law is fairly clear that if there is a contract provision that addresses the issue at hand, then you cannot have a promissory estoppel claim based on a representation about that

contract claim. And Mr. Daugherty is absolutely seeking relief pursuant to the provisions in the escrow agreement. And that, in and of itself, would knock out his promissory estoppel claim.

And then -- and maybe the biggest problem -- I think he's got a number of problems with the promissory estoppel claim, but maybe the biggest one is reasonable reliance. Again, Mr. Daugherty hasn't even alleged that any of the statements were made for the purpose of causing Mr. Daugherty to reasonably -- to rely, and that it would be reasonable to expect him to do so.

But Mr. Daugherty's conduct -- he alleges that he would not have paid the judgment and that he would have sought to invalidate the escrow agreement at trial. And I think both of those are -- they're also, again, conclusory allegations that he's made without sufficient -- he has not made allegations in his complaint in this action sufficient to withstand, I believe, a motion to dismiss, and certainly not to show a likelihood of success on the merits for the status quo motion.

But what he's really said and what he explained in the briefing that he meant by that is

that he would have sought offset. The problem that Mr. Daugherty has there is he -- offset is an affirmative defense.

THE COURT: I mean, we're all about to get into that very deeply, so ...

MR. KATZ: Okay, Your Honor. Thank you, I appreciate that.

But the likelihood of success on the merits on the promissory estoppel claim, I think, is very low. He's got similar issues on the unjust enrichment claim because of the representations and because of the equivalent value that HERA received in exchange for the assets.

On the fraudulent transfer claim, we don't believe that there was a transfer and there's been evidence of a transfer. And Counsel may respond to that and say, "Well, that's because Highland hasn't shown where the assets are." I'm anticipating that to be their response on that.

But I think Your Honor identified the point that that's not why you get a status quo motion. If they think there's evidence that they need, you know, there's a motion to compel. But for purposes of their motion, they have not produced any -- have not

cited to any evidence, have not even made the allegation that -- other than a conclusory allegation -- that they have a likelihood to succeed on the merits.

And then finally, Your Honor, I think they have the same -- the last element, that with the harm to him, the harm to Mr. Daugherty would outweigh the harm to Highland. They simply have a conclusory allegation in their motion without providing any support for that, Your Honor.

And again, I just -- I'm happy to talk about that issue further, but I think on a motion of this seriousness with the heightened standard, that they need to show that conclusory allegations are not sufficient.

THE COURT: Thank you.

MR. KATZ: Thank you, Your Honor.

MR. CHRISTENSEN: Just briefly, Your Honor.

I suppose it's an interesting philosophy of language, a question of what counts as something being conclusory. But we have certainly done more than offer a conclusion. We have laid out a timeline of actual intent to delay or defraud with

respect to the fraudulent transfer claim.

And just the items that are attached to our motion at Exhibit N, O, P, and Q, are a series of e-mails and events that I think anybody bringing a fraudulent transfer claim might characterize any one of them as a smoking gun. That is more than a conclusion. Our conclusion that this transfer was done with actual intent to defraud is based on very particular, very detailed, minute-by-minute documents. So it is certainly not conclusory. It's sort of conclusory to call that conclusory.

And it's important, also, to remember that when Vice Chancellor Glasscock suggested that potentially the fraudulent transfer claim could be fit for summary judgment disposition, he also said things like "Maybe there's a perfectly reasonable explanation for this." I think discovery has shown that there is not a perfectly reasonable explanation for this. And he did not have access to those documents, nor did we at the time that he made that statement.

As far as seeking this relief rather than simply monetary damages, that has been in our complaint since the beginning.

THE COURT: What is the -- can you

address the point that the Texas award is monetary and not for the specific assets that are mentioned now in your briefing?

MR. CHRISTENSEN: Sure. I can.

I'll address that by saying, quoting again HERA's closing argument in the Texas trial. "... [I]f Pat Daugherty happens to prevail in his lawsuit against Lane, Patrick and HERA you heard Jim Dondero testify, he gets his interest, which is currently escrowed in the third-party escrow account, all of it."

We have made a claim for promissory estoppel that statements like that with codefendants show clear evidence of a promissory estoppel claim. That kind of statement shows how the statement was meant to be perceived, it shows how people did perceive it.

And I want to go to the jury question because we actually have -- unlike many cases where the idea of an objective standard, what would a reasonable person do, is sort of an academic question. But in this case we have a jury, which is sort of the quintessential reasonable person, writing back to the judge, "If we assign a dollar value to 'Fair Market

Value of Daugherty's HERA units' in Question 18" -- that's the question that awarded him $2.6 million -- "is this in exchange for his HERA units currently in escrow, or in addition to them?" The judge instructed back, "Do not discuss or consider the effect your answers will have."

And then the final judgment made clear that it was not in exchange for those assets in escrow, that it was in addition to them. And there was appellate litigation about that issue, and it was settled that it was not a replacement for those units. But my point really is: We have very clear evidence that the Texas judgment and the people making the Texas judgment believed that those assets were being held in escrow for Pat Daugherty, which is exactly what the defendants tried to tell the jury to believe in their closing arguments.

So the fact that the Texas judgment was purely monetary is, A, not entirely true; and, B, it's not -- does not defeat the promises that they made throughout that trial, nor the fact that they transferred the assets once the judgment came through.

Let's see. On the promissory estoppel claim, it's just not what they said at trial, that Pat

Daugherty had an interest in this LLC but, by the way, there's nothing in it. So if you award him anything, it's going to be completely valueless.

I want to respond just briefly to the point that these assets can be valued. And they can be. This court is very experienced in appraisals. But the easiest and most efficient way to deal with this, the value, is to give the assets themselves rather than require, effectively, a -- more than one appraisal inside of this case, because there are assets held by a private equity fund, and those assets include private companies. So we would have to have a sort of quasi-appraisal action contained inside of this, instead of doing what is much easier for the parties and the Court and just addressing those assets in an equitable manner and providing an equitable remedy.

The affidavit does say that they are solvent. I believe the affidavit was also given by the same person that the -- it was either the arbitration panel in *Credit Strategies Fund* or the Bankruptcy Court in *Acis* said that Isaac Levinson's statements were not credible and that his statements contradicted documentary evidence in a clear way.

In addition, they don't say by how much they are solvent. It could be the case, based on the face of that affidavit, that they are solvent by a million dollars. We simply don't know. And again, the question of solvency as it relates to irreparable harm in most of these cases is in a sort of antiseptic environment where it really is just a matter of: Does this party have sufficient assets?

And again, that's not the only question in this case. The question in this case is: If the Court does nothing, what is the risk that Highland will do exactly what it has done to these assets vis-a-vis this litigant before?

That's all I have, Your Honor.

THE COURT: Thank you.

My intention is to hear the status quo order and the motion to dismiss and then take a break and see if I can get something together to share my thoughts. So let's move on to the motion to dismiss, unless folks want to take a short break.

MR. KATZ: I'm prepared to proceed, unless Counsel wants a break.

MR. UEBLER: I'm prepared to go forward.

THE COURT: All right. You may proceed.

MR. KATZ: Thank you, Your Honor.

So I won't belabor the procedural background, because I know Your Honor is familiar with it, other than to say that after Judge Glasscock had dismissed a large number of Mr. Daugherty's claims, there was -- a promissory estoppel claim was then added. And we filed the motion to dismiss as to that claim, and that's the motion that we're here for today.

To prevail on a promissory estoppel claim, Mr. Daugherty has to allege a conceivable set of circumstances that would allow a showing that there was a promise that was made, that it was reasonable, that the expectation of the promisor was to induce the action of forbearance on the part of the promisee, that the promisee reasonably relied on the promise and took action to his detriment, and such promise is binding because injustice can be avoided only by enforcement of the promise.

And I do want to -- I will be efficient, but I want to address each of these elements, Your Honor. And the -- I want to start with

the reasonable reliance. As I mentioned a moment ago in connection with the status quo order, that Mr. Daugherty is really claiming that he would have sought offset had Mr. Dondero -- actually, I apologize, I want to take a quick step back.

Although Counsel's pointed to a closing argument of HERA, that I believe he attributed to Highland's counsel, I just want to be clear for the record that the statement that Counsel just read from the closing argument was for HERA, not for Highland, and there was separate counsel.

THE COURT: Hasn't there separately been an assertion of a common interest?

MR. KATZ: There was, Your Honor. But I just believe Counsel -- I'm sure it was inadvertent -- said "Highland." And I just want to be clear for the record that that statement was on behalf of HERA at closing argument.

But, more importantly, in the complaint they only allege two statements: a statement by Jim Dondero at trial and a statement by Mr. Klos in a declaration made several months after the final judgment. And so when Mr. Daugherty claims that his reasonable reliance was not seeking offset at the

trial, the second statement can't be a basis of that; and the issue that Mr. Daugherty has, that there can't be a reasonably conceivable set of circumstances to show reasonable reliance for a couple of reasons.

One, the date that Mr. Daugherty filed his counterclaims with his claims, he had -- the LLC agreement with Highland's offset provision against the value of HERA was in that document. In fact, that was the basis of one of Mr. Daugherty's claims, that there was going to be -- there was the risk of this improper offset. He was challenging those provisions.

But yet he never pled offset as a defense. And it is a required affirmative defense under Texas law. And it is clear that when the final judgment was entered, that's *res judicata*, that issue was barred.

So Mr. Daugherty is saying that now had Jim Dondero not testified as he did on the stand, that he would have filed the declaratory judgment action to offset the judgment that Highland obtained against him from the judgment he obtained against HERA cannot serve as the basis for a promissory estoppel claim in this action because he would be barred as a matter of law.

THE COURT: Is that a little too technical? I mean, is the point a little more abstract than that, which is that had Dondero not testified as he did and assured everyone in the courtroom that the escrow was there for Daugherty's satisfaction down the road, that there are plenty of different options he could have taken? I mean, any sort of resistance or leverage or anything like that in regards to paying his own judgment, whether or not a technical offset was procedurally available to him, seems to be kind of reducing this a little bit too far down into the technicalities.

MR. KATZ: Well, I don't believe so, for two reasons. But the most important one being there's no reasonably conceivable set of circumstances where he could have taken action. And I'll address that momentarily.

But to the point, that was his response. That's what's in his pleading, both in his complaint and in response to the motion to dismiss. That's what he said he would have done. And that wasn't available to him.

And it wasn't just filing a declaratory judgment action for offset that he would

have been barred from doing. He had two years to plead offset as a defense or to plead facts in the Texas action that arguably could have given rise to some reliance claim.

THE COURT: It seems odd to claim that there was no reliance because he didn't do something before the act in question happened.

MR. KATZ: Well, Your Honor, in fact, quite the opposite. As Mr. Daugherty said in his reply brief to the status quo motion -- and this is on page 2 and 3 of Daugherty's reply brief -- "In fact, during the trial and before Daugherty won his judgment, Defendants stressed that Daugherty was an owner of HERA units." Then he puts in a footnote, "At the same time, Defendants took the position that Daugherty held no economic interest in HERA. Accordingly, Daugherty did not take the purported admissions at face value and litigated for a judgment that he retained his HERA units."

And the significance of that, Your Honor -- it's the same significance as what I was trying to say a moment ago and I probably did not say it very clearly -- is from the moment he filed this claim, he was aware that, as he says here, that his

value -- the value of his shares in HERA were valueless, as Highland was saying they were. Because that was one of his claims in the lawsuit. And he did not do anything to try to protect that vis-a-vis a judgment that Highland might get against him at any time during the trial.

So to think that, "Oh, well, he was about to do it" after two years, knowing everything that he knew, the LLC agreement allowing the offset, Highland taking the position that his units were valueless even though he was suing for it, that somehow he was going to try to offset his claim against HERA against Highland's claim against him, and he just didn't do it because Jim made the statement he did on the stand is not a reasonably credible position. It's not something that could have a -- or there could be a reasonably conceivable set of circumstances to show a reasonable and detrimental reliance.

And I think -- and, Your Honor, if you also look at the whole circumstances around Mr. Dondero's statement on the stand, was not -- in fact, the question -- it was by HERA's counsel that was questioning him at the time. And the question

was: The assets that are being escrowed, or the money that's being escrowed right now, what happens to them? And I think it's significant for a couple of reasons.

One, right now they're talking about the day that the question was asked. They're not talking about a day in the future. And I think it's also significant that that was --

THE COURT: Maybe that was the question, but the answer was, "In the future they will go to him."

MR. KATZ: That's -- Your Honor, respectfully, that's not the way I read it. But I think the point is -- two points, Your Honor. One, that was a question by HERA's counsel; that was not a question by Daugherty's counsel.

If this was so important that Daugherty was going to forego seeking to invalidate the escrow agreement or trying to do trial amendment and get a new claim in, there was no action by his counsel to follow up and say: Let's be clear. Let's not talk about right now, let's talk about in the future. And again -- or ask about what about the resignation provisions, what about the termination provisions.

There's a whole host of conditional circumstances that show that Mr. Daugherty, purportedly relying on that statement to not try to bring a declaratory judgment action for offset or to seek to invalidate the escrow agreement would have been reasonable reliance. Again -- because, in fact, up until that point, Mr. Daugherty not only waited two years, he waited past the amended pleading deadlines. In the face of what he says, I'm being told by Highland that my assets are valueless. You know, and to the extent they say that I'm still owning HERA units, I never believed that there was anything there. But yet he didn't do anything about it before Mr. Dondero made the statement to HERA's counsel.

So, again, all of those, all of that goes to whether he could have -- show any circumstance where he could have reasonably relied.

Similarly, I think if you look -- and I bring in these things to show Your Honor what is not in the complaint or not in the response to the motion to dismiss. After the judgment, he claims that he was entitled to this offset, but yet he paid his full judgment. He could have just paid the difference in the judgment.

THE COURT: That's the point, is that he paid the whole judgment; right? Kind of chipperly wrote the check and thought it was all going to work out in the end.

MR. KATZ: Right. Well, without -- but with the whole circumstances and you look at his allegations, if his allegations are to be believed, it's not reasonable to believe that somebody who was going to do what he did but for Jim Dondero's statement would have, again, waited for two years, not filed -- not done -- taken the legal actions that he's now claiming he would have taken.

He did seek to amend his pleadings right before trial. These were not in there. That was, again, before these statements. Again, it's not credible to believe that he reasonably relied. And he hasn't alleged anything.

Again -- and so that was why I said initially to Your Honor's question, there are two points. One, when you look at the totality of what he didn't allege and what he didn't do, that there can be no set of circumstances where he reasonably relied, but then when you look at what he says he would have done, which is the offset. And he would have been

legally barred from doing that because he waived it. Also because -- and the law is cited in our motion, that because Highland and HERA are separate entities, there wouldn't have been an offset between those judgments anyway.

So the two things he says that he would have done was seek to invalidate the escrow; which, again, he was aware of that escrow agreement before trial. He sought to amend his pleadings before trial but did not address that escrow agreement at all.

He has shown that he believes that his -- before Mr. Dondero made that statement, he didn't -- he thought his HERA units had been rendered valueless and that's how he was litigating the case. But he didn't try to "invalidate" the escrow agreement. He also doesn't explain or provide any allegation of what that means, to invalidate the escrow settlement.

He doesn't provide any legal theory or allegation of evidence to support a legal theory that would show that had he sought to invalidate the escrow agreement that the court would have allowed that amendment and it would have changed the outcome.

The next element I want to talk about was that a promise was made. And, again, he's identified two promises: one by David Klos, one by Jim Dondero. There's -- the one by Mr. Klos, again, was done several months after trial. The one by Mr. Dondero is obviously during trial. But both of those statements, when you look at them, are not unequivocal statements of -- there was no set of circumstances where Mr. Daugherty will not be paid this money on a final, nonappealable judgment. And -- which is what --

THE COURT: Why is that not exactly what Mr. Dondero said?

MR. KATZ: Well, Your Honor, Mr. Dondero was being asked a question about the language in the escrow agreement, that specific provision. And he was being asked based on circumstances right now. And perhaps if I give you an analogy. If I hire an employee and I'm paying the employee $50,000 a year and they're an at-will employee, and somebody asks me, "Well, how much does that employee make?" I'm not likely going to say, "Well, annually $50,000 a year, but I can terminate them at any time." Or "$50,000 a year, but less

withholding," or other caveats.

And the question that was asked to Mr. Dondero is the -- right now the assets that are -- and I apologize, I don't -- I can grab the quotation. I don't have it right in front of me. But the key part was that it was predicated on right now, what happens right now if there's a final judgment.

So -- and, again, this is Mr. Dondero who's an individual defendant who is not being questioned as a representative of Highland. And what they want to do is take that statement and say this is an unequivocal statement that was binding Highland. And it just doesn't rise to that level under the legal standard.

And, you know -- but, moreover -- again, because what -- Mr. Dondero was reading the escrow agreement on the stand as a layman, but that's really more significantly the point, is that if the alleged promises are subject to termination by a contract -- I know this is in our pleading, the *TrueBlue HRS Holding* case -- promissory estoppel does not apply where a fully integrated and enforceable contract governs the promise at issue.

And that's the issue, is the contract

is the contract; it means what it means. And the -- unless there -- I don't believe, Your Honor, that they even alleged that there is some promise, unequivocal promise, that Mr. Dondero or Mr. Klos made that was not subsumed by the escrow agreement. And that's really the basis of their claim here.

They also have to show that the claim is necessary to avoid injustice. And obviously, they have brought a fraudulent transfer claim and an unjust enrichment claim arising out of the same course of conduct, that they claim these representations are related to those claims. And I think the case law is fairly clear on this, that this is exactly the type of situation where a promissory estoppel claim is not necessary to avoid injustice.

THE COURT: But is the conclusion to be taken from your argument that nothing can ever be pled in the alternative to a promissory estoppel claim?

MR. KATZ: No, not at all. But I believe that you would have to have a set of circumstances where there wasn't a fully integrated enforceable contract, and that the underlying promises weren't about the interpretation of that contract.

And then, finally, Your Honor, I'm going to use the word "conclusory" again, that they -- well, actually not even conclusory, Your Honor. They didn't even plead that Highland intended to induce reliance or that Highland should have reasonably expected to induce reliance by Mr. Daugherty.

And I don't think that's necessarily an accident. I think that's because the statements that they're relying on were not statements that were made on behalf of Highland. They're individual statements. And I think that it would be fairly tortured to say otherwise.

So, Your Honor, again, for each of those reasons, we don't think that they have pled any reasonably conceivable set of circumstances that could support the promissory estoppel claim.

THE COURT: Thank you.

MR. KATZ: Thank you, Your Honor.

MR. UEBLER: Good afternoon again, Your Honor.

THE COURT: Good afternoon.

MR. UEBLER: I'll start with the promise that was made. And before I do, I think I heard Mr. Katz talking about the standard to prevail

on a claim. And I understand we're a little bit late in the game of this lawsuit. But this is a 12(b)(6) motion and the standard is reasonably conceivable.

So I just want to reset where we are on this motion and talk about the promise that was made, briefly. So what was the promise? The promise was Jim Dondero testifying at trial, under oath, that Mr. Daugherty's assets would be held in escrow and released to him through HERA if he won in Texas. I mean, it was as simple as that.

You may have been left with the impression from Mr. Katz's presentation that the line of questioning was about the terms of the escrow agreement. I can save all of us and just refer to the pages of the testimony, or I'd be glad to read the preceding three or four questions to set that up. But it was not interpreting the escrow agreement. And Mr. Katz didn't have the testimony on hand, but I do. And the question was:

"Question: Okay, so -- so if Mr. Daugherty somehow prevails in his lawsuit against Patrick Boyce and Lane Britian and HERA, what happens to Mr. Daugherty's interest that's being escrowed right now with a third-party escrow agent?

"Answer: They go to him.

"Question: I'm sorry?

"Answer: They go to him via to HERA and then to him."

Is that promise consistent with the escrow agreement? Yes. Is that promise separate and apart from the escrow agreement? Yes. Mr. Dondero wasn't there interpreting a contract. He was there making a promise to Daugherty and to the jury.

And just as we allege in paragraph 131 of our complaint, it was the reasonable expectation of Highland, when that promise was made, that it was going to be relied on.

THE COURT: Tell me more how the statement was separate and apart from the contract.

MR. UEBLER: The statement is separate and apart from the contract because I think -- Mr. Katz would be the first one to tell you that Mr. Daugherty was not a party to the escrow agreement. Mr. Daugherty, on the face of it, has no rights under that escrow agreement.

So this idea that Highland proposes that because there's a contract out there that also addresses the subject matter of the promise, the

promisee is, therefore, precluded from relying on that promise, it just -- it doesn't hold water. They don't -- they didn't cite any cases.

We said it's not the law of Delaware and never should be. Highland shouldn't be allowed to contract with Abrams & Bayliss and then use that contract to say that a promise made to Daugherty that Daugherty seeks to enforce, that is -- you know, follows the terms of that contract but doesn't expressly give any rights to Daugherty, that's just -- that's not an argument that the Court should accept, in our view. So that's why I say it's separate from the contract.

And that also gets into the alternative claim argument, too. Are we entitled to bring promissory estoppel and a fraudulent transfer claim and an unjust enrichment claim? I think the *Chrysler* case in the Supreme Court settled that question a long time ago. And I think Rule 8 of this court does, too.

So, of course, there's overlap in what was promised and what's in the escrow. Although, I will point out, the escrow -- Mr. Katz said something like -- he referred to a host of conditional

circumstances in the escrow agreement. And I think his point was paragraph 5 and paragraph 10 that they had relied on when Abrams & Bayliss resigned. Well, you won't find any of that in the promise that was made by Jim Dondero under oath to Pat Daugherty and the jury. So whatever conditional circumstances may be in that contract, they're not in that promise.

And the notion that Jim Dondero was testifying in his individual capacity, I think we debunked that in Exhibit A to our answering brief -- which was Highland's own witness list -- that provided an entire paragraph of what Mr. Dondero would be testifying about, including testimony in support of Highland's and Cornerstone's claims against Daugherty and the damages suffered and the third-party defendants' defenses to claims asserted against them.

So Jim Dondero is Highland. He is HERA. He's HERA ERA management. He controls them all. Mr. Katz pointed out that the closing argument by HERA's lawyer in Texas was just HERA's lawyer. Well, Jim Dondero controls HERA, just as he controls Highland. So I view that as a distinction without a difference.

But what that closing argument did was

reaffirm the promise -- I thought I had it here. So what was said on closing argument by HERA's counsel, just after Jim Dondero made the promise, was "... if Pat Daugherty happens to prevail in his lawsuit against Lane, Patrick and HERA you heard Jim Dondero testify he gets his interest, which is currently escrowed in the third-party escrow account, all of it."

Then we had the other promise, which was that September -- September of 2014, the Klos affidavit. It restated the promise. This gets to the reasonableness of the reliance of Daugherty's promise -- the promise to Daugherty. He kept hearing this.

And the idea that Daugherty should have somehow foreseen in either the six weeks between when Highland sprung the escrow agreement on him before trial or when Dondero testified or when Klos submitted his affidavit -- by the way, as the senior finance of Highland Capital -- that Daugherty should have foreseen two years from now when he went to pay the judgment that Highland was going to break that promise.

So the idea that Daugherty should have

done something between December 2013 and December of 2016, I think entirely misses the point of our claim. The reliance that we allege -- and it's paragraph 133 of our complaint -- is "In further reliance on the promises of Highland Capital and its agents, on December 14, 2016, nine days after Highland Capital secretly obtained the Escrow funds, Daugherty wired approximately $3.2 million in cash to Highland Capital in satisfaction of its award of attorneys' fees in the Texas Action."

That was the reliance. What could have been done, other than a cash payment, Daugherty could have just engaged in self-help. He could have paid the difference between the 2.6 and the 2.8 of the judgments. He could have not paid anything at all. He at least should have had the chance to go to court like the petitioner did in the *Bonham Bank* case that we cite from Texas to explain to a judge why, under these circumstances, even though there are three different litigants involved, these claims should be offset. But he didn't even get that chance because he relied on Highland's promises and he wired the full amount. They took away that chance from him.

We don't have to prove today whether

he would have won on that setoff claim in Texas or anywhere else. We just have to prove that it's reasonably conceivable that he was deprived of that chance because he reasonably relied, to his detriment, on a promise that was made under oath and repeated.

In their opening brief, the defendants stated that "Injustice can (and should) be avoided through collection efforts in the Texas Action, which Daugherty has not even attempted to pursue, making this claim premature."

I just wanted to point out, this was in Exhibit B to Highland's own opening brief. They attached Mr. Daugherty's interrogatory responses. And if you look at Interrogatory 36 on page 25, Mr. Daugherty stated that "... apart from filing this action to collect his Texas judgment, he filed for a writ of execution in Texas on July 7, 2017, which was unsuccessful because Highland Capital claimed HERA had no assets. The return of service was dated September 26, 2017."

I think that's totally irrelevant to the questions before the Court, but I wanted to point out that Mr. Daugherty did, in fact, attempt some collection efforts in Texas and those were

unsuccessful.

I'd also like to point out that in addition to being able to plead alternative claims, this is one of those cases where injustice can only be avoided through the enforcement of this promise, notwithstanding the other claims out there. The injustice to be avoided is allowing Highland Capital to walk away with both judgments from the Texas action. They got Daugherty's 3.2 million, and they got his HERA assets. And that's the injustice to be avoided.

When you and Mr. Katz were discussing this element, he referred to a fully integrated contract. Again, he would be the first to tell you, I'm sure, that Daugherty has no rights under that fully integrated contract. So the fact that there is a similar contract out there is not relevant to the analysis.

That's all I have, Your Honor.

THE COURT: Thank you.

MR. UEBLER: Thank you.

MR. KATZ: Your Honor, can I just address a couple points?

THE COURT: Yes.

MR. KATZ: For clarity purposes, Counsel -- this is the second time they've read the statement from HERA's counsel during the closing argument. That was not part of the statements that were alleged to be part of the detrimental reliance in either the complaint or in the response to the motion to dismiss.

And I think that's significant, again, because Counsel is certainly correct that what they say is that Daugherty would not have paid the judgment against him by Highland. But their explanation of what that means is that he would have sought offset or sought to invalidate the escrow agreement, both of which could only have been done, been sought, during trial. I suspect that's why they are not relying on the statement that was made at closing argument where it would have been too late for them to make those allegations.

Highland had a judgment, a fully perfected final judgment, collectible judgment that Mr. Daugherty paid. And from the motion to dismiss perspective, claiming that he would have filed either or both of two things that were barred by *res judicata* does not provide the basis to avoid -- where there's a

reasonably conceivable set of circumstances that those allegations could support to avoid a motion to dismiss.

And, again, we're really just talking about Jim Dondero's statement because, as Counsel recognized, the Klos statement was made, I believe, roughly five months after the -- four or five months after the final judgment was entered.

And then, finally, lastly, I just want to touch on the escrow agreement. Of course we recognize Mr. Daugherty is not a party to that agreement. But Mr. Daugherty's case is that he is asserting rights under that escrow agreement. He is certainly saying that there was a transfer under that agreement and that that agreement required the assets, the money being held pursuant to that escrow agreement, to go to HERA, which then Mr. Daugherty as the shareholder of HERA would have had rights to.

And, you know, we disagree with some of the underlying factual basis. We don't agree that there was a transfer. But I think counsel for Mr. Daugherty would certainly not say that there's not a fully enforceable promise in that escrow agreement that they are seeking relief under.

And that's -- and just as importantly, Mr. Dondero's statement was exclusively an interpretation of that promise. And that's why -- and I think that's exactly what the *TrueBlue* case is referring to. And there's a fully integrated contract that has the promise that legally and factually determines what the rights under that contract are.

And Mr. Dondero's interpretation of that contract -- even if it's the exact same as the contract or even if it's different than the contract -- doesn't change that the claim is pursuant to the contract and not for promissory estoppel.

THE COURT: What is your understanding of Mr. Daugherty's ability to sue to enforce the escrow agreement in a way that benefits him?

MR. KATZ: Well, he is a shareholder of HERA. And as a shareholder of HERA -- I mean, I'd have to think through all the *res judicata*, collateral estoppel, statute of limitations issues that all have come out about all the issues that have been litigated.

THE COURT: I just mean from the terms of the contract.

MR. KATZ: I don't believe that

Mr. Daugherty is a third-party beneficiary of the contract, if that's Your Honor's question. He's certainly not a direct party to the contract, but he is a shareholder of HERA. And their allegations are that Highland was contractually obligated to send money to HERA under that agreement.

I think there are potentially technical legal issues under that. That's, of course, not the claim that Mr. Daugherty has brought. And -- but if Mr. Daugherty had any rights, it would be through HERA.

THE COURT: So is it your understanding that the point of the doctrine that you're relying on, that there can't be both a contract and a claim for promissory estoppel, is that those rights substantially overlap?

MR. KATZ: I would suspect that's probably the policy reason behind those decisions.

THE COURT: So if Mr. Daugherty doesn't have contractual rights under the escrow agreement, why does that knock out his promissory estoppel claim?

MR. KATZ: Because it's the same -- because whatever rights he has under the contract,

whether he has rights or not, are no different than any rights he would have vis-a-vis Mr. Dondero's interpretation of what that contract said, what that contractual language says.

THE COURT: Go ahead.

MR. KATZ: I think that the policy is is not to create quasi-contractual claims when there is a contract, regardless of who's the party to the contract.

And, actually, I think it's even -- there's no wiggle room around this situation because it's not -- Mr. Dondero was -- I mean, I think the quote was, "They go to Mr. Daugherty through HERA" is the quote. He wasn't saying something -- there's not been an allegation, for example, that Mr. Dondero's statement or Mr. Klos' statement created a separate contract between Mr. Dondero or Mr. Daugherty.

I mean -- and that's not what -- I mean, there hasn't been an allegation that that's what they were saying -- that Mr. Dondero was saying that or Mr. Klos was saying that. The allegation is they were saying that's what the contract, the escrow agreement, means. And that's why you can't have a separate claim, because the contract means what it is

and the contract determines the rights.

THE COURT: I understand.

MR. KATZ: Thank you, Your Honor.

THE COURT: Thank you.

MR. UEBLER: May I, briefly?

THE COURT: Briefly.

MR. UEBLER: Just to be clear, Your Honor, we very much rely on the Klos statement as a separate promise on behalf of Highland in the affidavit. We think it also supports the reasonableness of the reliance on Mr. Dondero's promise on behalf of Highland. But we view the Klos affidavit as part of the promise generally.

With respect to the closing argument by HERA, we didn't use it sooner because we just -- actually, I have to give credit where credit is due -- my colleague, Mr. Christensen just found it. We didn't try the Texas case, so we did find it in the record.

And fortunately for us, Highland agrees on pages 13 and 14 of their own motion to dismiss that the Court can "[consider] additional materials from related litigation that were not attached to the complaint if the plaintiff relied on

those materials in casting his complaint, as Daugherty has done with regard to the Texas Action."

The last paragraph on page 14 goes on to say, "To the extent the Court finds that the Texas Action materials are not already subject to consideration based on Daugherty's extensive reliance on them, Defendants respectfully request that the Court take judicial notice of the documents under Delaware Rule of Evidence 202(d)(2)."

So we submit that the Court certainly can consider the trial transcript from the Texas action as further support for the reasonableness of Mr. Daugherty's reliance.

And my final point with respect to the escrow agreement and the notion -- I think that what Mr. Katz said is that Daugherty, in his view, has no direct rights under that agreement. The only real direct relevance of the escrow agreement with respect to the promissory estoppel claim is that it's even more evidence of the reasonableness of Mr. Daugherty's reliance on the promise because it's consistent with that promise.

Thank you, Your Honor.

THE COURT: Thank you.

Anything to -- Mr. Katz, I'll give you the last word.

MR. KATZ: No, Your Honor.

Just to address Counsel's last point about just finding the statement. You know, again, I think that the issue is what did Mr. Daugherty actually rely on. Their claim is that when he wired $3.2 million -- not what statements Counsel has found in the record recently that could be retroactively applied that way.

And Counsel's -- again, the complaint that is in front of Your Honor that has the allegations rely on the two statements and is very clear that -- it is explained in their briefing -- that the remedies -- that the detrimental reliance was forbearance from taking action in the Texas lawsuit.

So anything that occurred anytime after they could raise issues in a Texas lawsuit could not have been a basis for detrimental reliance.

THE COURT: Thank you.

I'm going to take a recess. It will be at least 20 minutes. So stretch your legs, do whatever. It'll probably be longer than that. But -- thanks for your patience, but it's faster this way in

the short term.

So we are in recess.

(Recess taken from 3:35 p.m. until 4:18 p.m.)

THE COURT: Thank you for your patience.

I'm going to start with the motion for a status quo order. It is denied. We have some time constraints this afternoon, so I will cut to the chase. Daugherty has not established a threat of imminent irreparable harm as he must. It is clear that Daugherty is pursuing this relief now based on what happened in the *Redeemer* case. This complaint was filed in July 2017, and he did not seek the relief that he's now seeking until after the papers on the status quo order dispute were filed in the *Redeemer* case. And Daugherty cites Highland's submissions in that case in his brief.

I disagree with Daugherty's reading of the *Redeemer* papers as indicating that Highland is in "severe financial distress" and is "unable to satisfy" the arbitration judgment at issue there. And the facts are very different as between the two cases. Before going to arbitration, there were issues involving control over assets that led to Highland

making representations to the Court in the *Redeemer* case. And in the more recent request for a status quo order related to confirming an arbitration judgment, there was no separate claim that this court needed to adjudicate, like Daugherty's fraudulent transfer claim here.

And, finally, the *Redeemer* parties ultimately stipulated to a status quo order. So I don't think that anything that this court did in entering the agreed-upon status quo order is helpful in deciding whether to issue one in this case.

Daugherty says that Highland has a pattern of avoiding judgments, but has given me no reason to think that Highland is going to do something between now and a post-trial opinion that would make it incapable of satisfying a judgment, nor is there anything in the *Redeemer* case that leads me to believe that.

Quite frankly, if Highland is as good at avoiding judgments as Daugherty claims, Highland would have already moved the assets. Daugherty, in his reply, touches on that point and raises concerns about whether the assets have already been transferred. He used a metaphor about the straw

breaking the camel's back. I'm going to use a different ungulate. He's provided no reason to believe the horse is not already out of the barn or that the horse is going to imminently flee the barn.

So I fully appreciate that Daugherty says that this is what happened to him in Texas, and I've indicated before that I agree with Vice Chancellor Glasscock's sentiment that what happened here fails more than the smell test. But that doesn't mean that there is a sufficient imminent threat that it's going to happen here with Highland.

I also distinguish this case from Vice Chancellor Glasscock's entry of a status quo order in the *Trussway* matter, which admittedly was, in part, based on Highland's "prior history." In that ruling, Vice Chancellor Glasscock noted the unique appraisal remedy that was at issue there, and distinguished that property right -- which is meant to substitute for a stockholder's ability to insist on unanimity in a merger -- from recovery in a tort or contract case. Daugherty is seeking the more common sort of recovery here, so I do not find *Trussway* instructive.

So, in sum, because Daugherty's motion for a status quo order is based on a recent

development that does not support a conclusion that Daugherty faces imminent irreparable harm, the motion for a status quo order is denied.

Mr. Christensen, do you have any questions about that?

MR. CHRISTENSEN: No, I do not.

THE COURT: Okay. Anything from DLA?

MR. KATZ: No, Your Honor.

THE COURT: Thank you.

Moving on to the motion to dismiss. Highland's motion to dismiss Count IX of the amended complaint is denied. Count IX is a claim for a promissory estoppel. And to state a claim for promissory estoppel, a plaintiff must plead four elements.

The first is that a promise was made. The second is that it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee. The third is the promisee reasonably relied on the promise and took action to his detriment. The fourth is that the promise is binding because injustice can be avoided only by enforcement of the promise. That's all from the *Chrysler* case out of the Supreme Court in 2003.

On Highland's motion to dismiss, I applied a reasonable conceivability standard of Rule 12(b)(6). Under that standard, I must accept all well-pleaded factual allegations as true, accept even vague allegations in the complaint as well-pleaded if they provide the defendant notice, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof. That familiar standard is from *Century Mortgage Company v. Morgan Stanley.*

Applying this standard, plaintiff has adequately pled the four elements. First, Highland made promises through representations it and its agents made in the Texas action. Highland, through testimony, explained that Daugherty would receive the escrowed assets upon a judgment being finalized.

Daugherty cites testimony from James Dondero, Highland's cofounder and president. On direct examination, Dondero was asked what would happen to Daugherty's interest that was being held in escrow, and Dondero stated that it would go to Daugherty via HERA if he won. This testimony is cited in paragraphs 43 and 129 of the complaint.

Highland tries to distance itself from Dondero, but it cannot do so at this stage. Highland says Dondero was testifying in a personal capacity. But the witness list Highland filed in the Texas action shows that is not the case. That is Exhibit A to Daugherty's answering brief. Highland had no response to this in its reply brief, beyond reiterating its original argument that Dondero was not speaking on Highland's behalf.

Based on the allegations of the complaint, including Dondero's role, it is reasonably conceivable he was speaking on behalf of Highland.

Other support for the alleged promise comes from an affidavit attached as Exhibit I to the complaint from David Klos. Klos submitted the affidavit and stated he had "... personal knowledge of the facts stated in this affidavit as the Senior Manager of Finance for Highland Capital ..." and because he oversaw accounting relating to HERA. Klos reiterated in his affidavit what the escrow agreement says, and Dondero testified to, which is that after a final nonappealable judgment, A&B, as the escrow agent, would transfer the deposit assets to HERA.

Highland also tries to distance itself

from Klos. And it cannot do so, as the document presented to the Texas court states Klos was providing the affidavit in his capacity as Highland's Senior Manager of Finance. At this stage, that is sufficient.

Together, these allegations are sufficient to establish that Highland made a promise that the assets would be held in escrow and released to Daugherty, via HERA, if Daugherty won in Texas.

Second, the reasonable expectation of Highland as the promisor was to induce action or forbearance on the part of Daugherty as promisee.

In briefing, Highland says the statements were not directed to Daugherty, "... but rather [to] the jury, the judge, legal counsel, the public, and so forth." That's a quote from page 20 of Highland's reply. It simply makes no sense to say that the statements were directed to everyone else involved in the legal proceeding -- indeed, in the world by virtue of including "the public" -- but not Daugherty, who had the greatest interest in that proceeding. It is reasonably conceivable the reasonable expectation of someone discussing the escrow agreement, as Highland did, would have been to

induce action or forbearance by their adversary in the litigation.

Third, it is reasonably conceivable that Daugherty reasonably relied on the promise and took action to his detriment.

Daugherty could have pursued other strategies if the escrow was not in place. Daugherty paid a judgment in the same case to Highland, which he alleges was in the amount of $3.2 million. If Daugherty knew what would happen with the escrow, he could have fought tooth and nail for an offset of the judgment amounts.

Highland focuses on the availability of a triangular offset in this situation, asserting that even if HERA owed Daugherty money, Daugherty was legally unable to offset the judgment he owed Highland by what he was owed from HERA. I think that misses the point, which is that Daugherty forewent even trying to obtain the offset, and bringing the issue to the attention of the Texas court.

He could have argued for other provisions in the final judgment, but he didn't. He paid his judgment and expected HERA and Highland would do the same as set forth in the escrow agreement.

Other members of this court have adopted a "no-chumps policy," meaning that good guys should not feel like chumps for following the rules. Daugherty played the game straight, and alleges Highland and HERA didn't. It is at least reasonably conceivable that Daugherty pursued the strategy he did because of the promises Highland made during the course of the litigation.

And that reliance was reasonable. Highland says Daugherty should have expected the worst because the language of the escrow agreement allowed the escrow agent to resign at any time, and so it was never a sure thing that the assets would be available to Daugherty.

In its reply, Highland says there was never any promise "... that the Escrow Agreement would never be terminated or that the Deposit Assets would never be transferred back to Highland ...." That reflects a dim view of the world, the way adversaries should evaluate the representations and promises made during litigation, and how the people making those promises should conduct themselves. Daugherty has adequately pled it was reasonable for him to rely on the statements he's identified.

Fourth and finally, it is reasonably conceivable that the promise is binding because injustice can be avoided only by enforcement of the promise.

Daugherty has made the point that Highland walked away from the Texas litigation with the benefit of both judgments. It received the assets supposedly held in escrow to satisfy the judgment for Daugherty, and it received payment from Daugherty to satisfy the judgment against him.

Black's Law Dictionary defines "injustice" as "an unjust state of affairs; unfairness." As myself and Vice Chancellor Glasscock have indicated, Daugherty's allegations raise serious concerns over the fairness of how things played out in Texas. It may be that the only way to avoid injustice is to enforce the promises.

It is not fatal to Daugherty that he has pled alternative theories of relief. Our Rule 8 allows it, and our Supreme Court has blessed doing so for promissory estoppel in the *Chrysler v. Chaplake Holdings* case. At the pleadings stage, those alternative theories of relief can go forward.

Highland also claims promissory

estoppel is not needed to prevent injustice because the alleged promises are incorporated within the escrow agreement, an enforceable contract. But Daugherty is not a party or a third-party beneficiary, and so cannot sue under the contract's terms. For those reasons, the motion to dismiss is denied.

Mr. Katz, any questions?

MR. KATZ: No, Your Honor.

THE COURT: Anything from you, Mr. Uebler?

MR. UEBLER: No, Your Honor.

THE COURT: I'd like to, then, talk about how we're going to get the summary judgment briefing done in time for trial and in time for me to have a minute to think about it.

MR. KATZ: Your Honor, we conferred -- my colleague conferred with Mr. Uebler this morning. I think we've worked out a schedule.

THE COURT: How long does that schedule leave me to think about it?

MR. UEBLER: Let me take a stab at this, Your Honor, and see if it makes any sense to you. So it's my understanding that the defendants are going to cross-move, or Highland -- it's a claim

against Highland. Highland will cross-move for summary judgment, and we will receive an answering brief/opening brief by June 14th. We'll reply by June 28th. And then looks like July 17th will be the final brief.

And I'm sure I speak for all the parties when I say we have no intention of imposing a burden on the Court to resolve that motion prior to trial. I think -- at least my view, and Mr. Katz and Mr. Reed can chime in -- we don't necessarily need to resolve the summary judgment/indemnification claim before trial because there's really not that much, if any, issue of fact to try regarding indemnification.

I would propose that we resolve on the papers, when the Court's able to do so, the issue of entitlement. And then, to the extent there's an issue of allocation or reasonableness, we can get together and propose something similar to Vice Chancellor Laster's *Fitracks* opinion. That was an advancement case, but I would envision something similar here.

So we're working in parallel and not burdening anybody prior to trial on those issues.

THE COURT: Anything to add?

MR. KATZ: No, Your Honor.

THE COURT: All right. That works for me, then, especially with the logical conclusion that this can just kind of float in parallel to the real merits issues to be handled at trial.

Anything else that we need to discuss today while we're all together?

MR. KATZ: Not from our side.

THE COURT: We pretty much handled every aspect of the case today. Thank you, all, for your presentations, they were helpful. And we'll be in touch.

We're adjourned.

(Court adjourned at 4:33 p.m.)

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CERTIFICATE

I, KAREN L. SIEDLECKI, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, and Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 96 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 3 through 19 and 84 through 94 which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 22nd day of May, 2019.

/s/Karen L. Siedlecki

Karen L. Siedlecki
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

EXHIBIT 7

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

REDEEMER COMMITTEE OF THE
HIGHLAND CRUSADER FUND,

Claimant,

v. Case No. 01-16-0002-6927

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Respondent.

PARTIAL FINAL AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with Section 9.03 of the Joint Plan of Distribution, and the Scheme of Arrangement, both entered into between the above-named parties and adopted in July 2011, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby, AWARD, as follows:

I. Introduction

A. The Parties

1. Claimant is a Committee of Redeemers in the Highland Crusader Fund (the "Committee"). Pursuant to the Joint Plan of Distribution of the Crusader Funds ("the Plan") and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors ("the Scheme")1, HC300, the Committee was elected from among the investors in the Crusader Fund to oversee the management of the Crusader Fund by Highland Capital Management, L.P. (Highland Capital). The Plan and the Scheme are the governing documents which contain the arbitration agreements giving rise to this arbitration. The Committee is represented by Terri Mascherin, Andrew Vail, and Shaun Van Horn of Jenner & Block LLP.

2. Respondent, or Highland, is an investment manager and, until July 2016, served as such for the Highland Crusader Funds ("Crusader Funds" or the "Funds") that were formed between 2000 and 2002. The Funds consisted of one "Onshore Fund" and two "Offshore Funds," and the capital that was raised through these entities was pooled into a "Master

[1] The Plan was implemented with respect to Highland Crusader Offshore Funds by a "Scheme of Arrangement" ("Scheme") sanctioned by the Supreme Court of Bermuda. The Scheme incorporates the Plan and, unless otherwise noted, the Plan and Scheme contain effectively identical provisions. Unless the context requires otherwise, we will refer primarily to the Plan.

Fund." The capital was invested primarily in "undervalued senior secured loans and other securities of financially troubled firms" among other asset types. HC-17, at HC-117.0010[2]. Highland is represented by Gary Cruciani, Travis DeArmand, Michael Fritz of McKool Smith, LLP.

B. The Arbitrators

1. The three arbitrators, whose appointment was formalized by the International Center for Dispute Resolution ("ICDR"), a division of the American Arbitration Association ("AAA"), were David M. Brodsky, Chair, John S. Martin, Jr., and Michael D. Young.

II. Background of the Dispute

A. The 2008 Financial Crisis

1. From 2000 until 2007, the Crusader Funds had double-digit annual returns, but in September and October 2008, as the financial markets in the United States began to fail, Highland Capital was flooded with redemption requests from Crusader Fund investors, as the Crusader Funds' assets lost significant value.

2. On October 15, 2008, Highland Capital placed the Crusader Funds in wind-down, "compulsorily redeeming" Crusader Fund's limited partnership interests. Highland Capital also declared that it would liquidate the remaining assets and distribute the proceeds to investors. However, disputes over the appropriate distribution of the assets arose between those investors who had voluntarily redeemed their interests earlier in 2008 but had not yet been paid their redemption amount ("Prior Redeemers") and those who were compulsorily redeemed in October 2008 ("Compulsory Redeemers") (collectively, the "Redeemers").

B. The Plan and Scheme

1. At about the same time, an investor raised allegations of misconduct by Highland Capital and filed a wind-up petition in the Supreme Court of Bermuda. In 2011, after several years of negotiations among the Prior Redeemers, Compulsory Redeemers, and Highland, the Plan and Scheme were adopted and became effective in August 2011. The adoption of the Scheme and Plan was to "enable the orderly management, sale, and distribution of the assets" by Highland and the right of the Redeemers Committee to oversee Highland's services. HC-300 at 300.017.

[2] There are three sets of exhibits that will be referred to herein, Joint Exhibits (referred to as JX- —), Redeemer Committee Exhibits (RC- —), and Highland Capital Exhibits (HC- __).

2. Central to the Scheme and Plan was the role of the Redeemer Committee, which was created so as to allow the investors in the Funds to have a greater level of influence over the affairs of Highland Capital than an ordinary creditors' committee would have in the liquidation of the Fund; that increased "level of influence" was particularly manifest in the Committee's ability to approve or disapprove of actions that Highland was contemplating taking, right of first refusal on other activities Highland wished to engage in, and the Committee's ability to terminate the services of Highland on 30 days' notice "with or without Cause." HC-300 at 300.016. Thus, the relationship between the Redeemer Committee and Highland, although grounded in contract, was designed to become one of mutual cooperation and confidence.

3. Pursuant to §2.04 of the Plan, a ten-person committee of Crusader Fund investors, composed of five representatives of the Prior Redeemers and five representatives of the Compulsory Redeemers, was created. HC-300, § 2.04. As part of the Plan and Scheme, Highland Capital continued to serve as the investment manager for the Crusader Funds. As part of its duties as investment manager, Highland Capital was to liquidate fund assets and distribute the proceeds to the Crusader Fund investors pursuant to an agreed 43-month distribution schedule. In addition, as an incentive to Highland in its liquidation of assets, the Scheme and Plan provided that the Deferred Fees would be paid to Highland if it completed the full liquidation.

4. It is not disputed that, between October 2011 and January 2013, Highland Capital distributed in excess of $1.2 billion to the Crusader Fund investors. It is also not disputed that the Crusader Funds were not completely liquidated when Highland paid itself the Deferred Fees in January and April 2016 and the Funds remain unliquidated as of the time of these hearings.

C. The Arbitration Agreement

1. Sections 2.09 and 9.03 set forth the terms and conditions by which these disputes are to be resolved in arbitration. Section 2.09 provides, in relevant part, that "in the event of a dispute between the Crusader Funds or the Redeemer Committee and HCMLP, ... the applicable representatives shall confer in god faith in an attempt to resolve the dispute...If the dispute cannot be resolved by mediation it will be referred to arbitration in accordance with Section 9.03."

2. Section 9.03 provides, in relevant part, that "Any dispute referred to in Section 2.09...shall be subject to and decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law. Arbitration shall be conducted in New York, New York."

D. Termination of Highland Capital and Ensuing Litigation

1. For reasons set forth below, disputes began to arise between the Redeemer Committee and Highland Capital, culminating in the termination of Highland Capital as investment manager by letter and notice dated July 5, 2016, for cause and without cause, with termination being effective on August 4, 2016, RC-318. Highland Capital was replaced as investment manager by Alvarez & Marsal CRT Management, LLC ("A&M"). JX-31.

2. On July 5, 2016, the Committee filed a Notice of Claim before the AAA, commencing an arbitration against Highland, RC-319, and also commenced litigation in Delaware Chancery Court, inter alia, to obtain a status quo order in aid of the arbitration. On July 8, 2016, a Vice Chancellor entered an oral status quo order in aid of this arbitration, pending the adjudication of the Committee's request for interim relief by an AAA arbitrator on an emergency basis pursuant to AAA Rule 38. On August 2, 2016, an Emergency Interim Order was entered by an Emergency Arbitrator appointed by the ICDR, which order replicated the oral status quo order entered in Delaware Chancery Court.

3. On July 21, 2016, Highland filed its Answering Statement, denying the claims and asserting affirmative defenses.

E. The Arbitration

1. This Tribunal was established as of October 31, 2016. The parties consented to the appointment of the Tribunal.

2. On October 14, 2016, Claimant filed an Amended Notice of Claim, seeking specific performance, injunctive relief, declaratory relief, money damages, and disgorgement arising out of the allegedly willful misconduct and violations of fiduciary and contractual duties by Highland Capital as investment manager of the Highland Crusader Fund. Claimant sought four species of relief: (a) an award requiring Highland Capital to provide to the Committee all information about the Fund and its assets as required by Section 2.05 of the Plan and Section 4.6 of the Scheme; (b) an award of money damages, including disgorgement, for Highland Capital's allegedly willful misconduct and breaches of its fiduciary and contractual duties, and for any unjust enrichment; (c) an injunction requiring Highland to return the so-called Deferred Fees and Distribution Fees to the Crusader Fund; and (d) declarations that the Consenting Compulsory Redeemers are entitled to payment of the Deferred Fee Account, and that Highland is not entitled to advancement of expenses and legal fees.

3. On December 14, 2016, Respondent filed a motion for partial summary adjudication, seeking dismissal of those claims seeking monetary damages, seeking relief as both breaches of contract and of fiduciary duties, and seeking relief barred by the applicable Statute of Limitations; by Order of March 1, 2017, we denied such motions without prejudice to their being renewed upon the development of a fuller record.

4. On February 16, 2017, Claimant filed a motion for partial summary adjudication, seeking an order compelling Highland to comply with its alleged contractual obligation under the Plan and Scheme to provide the Committee with the Crusader Fund's books, records and other information from 2011 to 2016. By Order, dated April 21, 2017, we entered a Partial Final Award, granting the relief sought by Claimant, and ordering Highland, inter alia, to produce non-privileged documents, as described in the Order.

5. On April 11, 2017, Respondent moved for Summary Adjudication of its counterclaim for advancement to defend against the claims brought by the Claimant in the Arbitration and in the parallel Delaware action, Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P., C.A. No. 12533-VCG (Del. Ch.) (the "Delaware Action"). Respondent sought a mandatory injunction requiring the Fund to escrow and segregate Crusader Fund assets to cover its indemnification and advancement rights. By Order and Partial Final Award in favor of Claimant, dated July 20, 2017, we denied Highland's motions for advancement in this Arbitration and in the parallel Delaware Action and for the mandatory injunction, on the ground that the "inter-party indemnification exception" applies.

6. On December 8, 2017, Highland moved to amend its Counterclaims against the Redeemer Committee of the Highland Crusader Fund and for leave to file a third party demand for arbitration against Alvarez & Marsal CRF Management, LLC ("A&M CRF"), Alvarez & Marsal North America, LLC ("A&M NA"), and House Hanover, LLC ("House Hanover"). On January 11, 2018, following a pre-hearing conference call, Respondent filed a revised proposed amended Counterclaim against the Committee alone, raising counterclaims of breach of the covenant of good faith and fair dealing in the its performance and enforcement of the Plan, breach of its fiduciary duty, and aiding and abetting the breach of fiduciary duty by A&M CRF, A&M NA and House Hanover.

7. By Order dated January 25, 2018, we granted the motion to amend Highland's counterclaims that raised direct claims of breach of fiduciary duty, breach of contract, and breach of the covenant of good faith and fair dealing arising out of the so-called Deferred Fees allegedly owed to Highland, and denied the balance of Highland's request for leave to file Counterclaims and Third Party Claims.

8. On February 1, 2018, Respondent filed an Amended Answer and Counterclaims, seeking an order that the Committee account to Highland as an investor therein for all payments, gains, profits, and advantages obtained as a result of the Committee's alleged wrongful actions; that the Committee pay money damages, disgorge, and make restitution to Highland for damages arising from the Committee's alleged breaches of contract, breaches of the covenant of good faith and fair dealing, and breaches of fiduciary duty, including by awarding Highland the Deferred Fees allegedly improperly withheld, as well as an award of Highland's fees and expenses, including reasonable attorneys' fees incurred in this action; and such other relief as the Panel deems fair and equitable.

9. On February 15, 2018, Claimant moved to strike portions of the Counterclaims on the grounds that certain of the new pleadings went beyond the limitations set by the Panel in the January 25 Order by including allegations that relate directly to claims the Panel had ordered not be included in the revised Counterclaim. By Order dated April 1, 2018, we granted the motion of the Claimant to strike portions of the Counterclaim and directed Respondent to submit a revised Counterclaim to Claimant and the Panel.

10. By Order dated March 19, 2018, we directed that "any party wishing to make a motion shall write a letter to the Panel, with copy to opposing counsel, seeking permission to make such motion..."

11. By letter dated March 28, 2018, Highland requested permission to file a motion for partial summary adjudication with respect to the Committee's breach of fiduciary duty claims that accrued before July 5, 2013, which Highland contends are barred by the statute of limitations. By Order dated April 5, 2018, relying upon AAA Commercial Arbitration Rule 33, we denied Highland's application to make a motion for partial summary adjudication, without prejudice to their doing so at the close of the Committee's main case at the hearing, if such factual and legal issues were briefed in the Pre-Hearing Briefs.

12. On April 5, 2018, Respondent filed its revised Amended Counterclaims, seeking relief, as earlier, for alleged breaches of contract, of fiduciary duty, and of the covenant of good faith and fair dealing.

13. On July 12, 2018, Highland moved to strike what it characterized as a new claim by the Committee. The Committee opposed the motion. By Order dated July 22, 2018, the motion to strike was denied.

14. On August 19, 2018, after a series of discovery motions were decided, the Parties entered into a Joint Proposed Pre-Hearing Consent Order, which was So Ordered by the Panel.

F. Hearing Dates and Witnesses

1. An evidentiary hearing was held in New York, N. Y. on September 12-14, 17-18, 20-21, and 24-25, 2018.

2. Claimant presented the oral testimony of Eric Felton, Burke Montgomery, David Morehead, and Brian Zambie, all Members of the Redeemer Committee; Steven Varner, Alvarez & Marsal ("A&M"); Robert Collins, PriceWaterhouseCoopers; and two experts, Scott Meadow, Analysis Group; and Basil Imburgia, FTI Consulting.

3. Respondent presented the oral testimony of Isaac Leventon, Esq., Highland internal counsel; Brant Behr, Redeemer Committee Member; Matt Jameson, formerly employed by Highland Capital; Scott Ellington, General Counsel, Highland Capital; the deposition testimony of Thomas Sargent, the Compliance Officer of Highland; and two experts, James Finkel, Duff and Phelps, and Karl Snow, Bates and White.

G. Post-Hearing

1. On October 24, 2018, Claimant filed its Post-Hearing Memorandum on its Claims and Respondent filed its Post-Hearing Memorandum on its Counterclaim.

2. On November 17, 2018, Claimant filed its Reply to Respondent's Post-Hearing Memorandum and Respondent filed its Reply to Claimant's Post-Hearing Memorandum.

3. On November 30, 2018, the Panel heard closing arguments from counsel to the Parties.

4. On December 10, 2018, the Parties filed Supplemental Post-Trial Memoranda, dealing with questions asked by the Panel during closing arguments.

5. On December 12, 2018, the record was declared closed.

6. On January 5, 2019, at the request of the Panel, the Parties consented to the adjournment of the timing of the award from January 11, 2019 to February 28, 2019. On February 25, at the request of the Panel, the Parties consented to the extension of the deadline to March 7, 2019.

H. Issues to be Determined

1. Claimant has pleaded four claims of breaches of fiduciary duty and of breaches of contract, arising out of similar fact patterns, as follows:

a) The taking of the Deferred Fees;
b) The payment of Distribution Fees;
c) The purchase of Plan claims without Redeemer Committee approval; and
d) The transfer of Barclays' Fund interests without Redeemer Committee approval.

2. Separately, Claimant has pleaded claims of breach of fiduciary duty, as follows:

a) Engaging in related party transactions without Redeemer Committee approval
b) Refusing to settle claims brought by Credit Suisse;
c) Refusing to resolve the claims brought by UBS, which included a Temporary Restraining Order ("TRO"); and
d) Failing to make a good faith effort to sell the Cornerstone asset.

3. In addition, Claimant seeks a declaratory judgment that there should be an immediate distribution of the Deferred Fee Account to the Consenting Compulsory Redeemers.

4. Respondent has pleaded one counterclaim against the Redeemer Committee, alleging that the Committee breached its contractual and fiduciary duties by delaying liquidation of the Fund's assets after July 2016, and depriving Respondent of its right to receive the remaining funds in the Deferred Fees account payable upon complete liquidation of the Fund.

5. Both Claimant and Respondent have also made claims for the recovery of their attorneys' fees and costs.

I. Applicable Law

1. At the outset, we address which law applies to which claims. It is not in dispute that Claimant's breach of contract claims are governed by the law of New York State. However, Claimant contends that the law of New York State also applies to the breach of fiduciary duty claims, as the breaches are claimed to arise from Highland's relationship with the Fund and its investors under the Plan, which provides for New York law. Respondent argues that any fiduciary duties owed by Highland arise under its services as investment manager of the Crusader Fund, and, thus, are governed by the law governing the Fund's Governing Documents, the state of Delaware.

2. Although there are few, if any, significant differences between New York and Delaware regarding fiduciary duties of entities in the position of Highland vis-a-vis its investors and the Committee, we find that the governing law on the breach of fiduciary duty claims is most appropriately that of New York, the state whose law governs regarding the Plan and rights of the parties under the Plan.

III. Discussion of The Issues

A. We recognize and appreciate the exemplary efforts by counsel for each Party. The results set forth herein are not a reflection of any difference in the quality of those presentations, but of our review of the evidentiary record and of the relevant law.

B. Taking of Deferred Fees

1. When the Plan and Scheme were adopted, a prominent feature was the creation of a Deferred Fee Account which was designed to provide an incentive to Highland to liquidate expeditiously the Crusader Fund of its assets. Deferred Fees were annual performance fees payable to Highland but deferred until, as, and when there would be a "complete liquidation" of the Crusader Funds' assets," Scheme §1.5.2, Plan §2.02, HC-300.

2. The evidence is uncontested that, as of the close of the hearing record in this matter, the Crusader Funds have not been completely liquidated. It is also uncontested that, on January 21 and April 6, 2016, Highland distributed to itself a total of $32,313,000 in Deferred Fees. JX-25 at 14; JX-26 at 13. Highland's stated rationale, or "position," for making the payment without there first having been complete liquidation was set forth in the financial statements of the Funds for the year-end 2015, issued on April 22, 2016: the UBS TRO "prevented the full liquidation" and that Highland "would have received the Deferred Fees...but-for the impact of the restraining order still in place." Thus, Highland "believe[d] its right to receive the [Deferred Fees] crystalized as of the date the [TRO] was lifted," or January 21, 2016, JX-025.0010.

3. The core of Highland's position was that, in January 2016, it sought, received, and relied on the advice of its outside counsel Akin Gump that the UBS TRO created an impossibility for it to have earned the Deferred Fees, thus allowing the self-payment. However, based upon the evidence heard, we do not find that Highland relied upon any such advice in executing its plan to take the Deferred Fees.

4. We find that in January 2016, Highland's CEO James Dondero raised the possibility of taking the Deferred Fees before complete liquidation with Thomas Surgent, a Deputy General Counsel and Chief Compliance Officer at Highland, who then discussed the idea with Highland's General Counsel, Scott Ellington. Surgent Dep. 133:4-19. Mr. Ellington testified that, in January 2016, he and others spoke on several occasions with lawyers from Akin Gump regarding the premature taking of the Deferred Fees, and that he received the advice that "the deferred fees could be taken under the circumstances," that it was a "calculated risk," and that, if successfully challenged, Highland would owe only "nominal interest." Tr. 10 167:14-168:25; 167:14-168:25.

5. However, Mr. Ellington's testimony is not supported by the hourly billing records of Akin Gump, which do not show any time being billed in January 2016 for anything having to do with this or any other Highland-related issue. RC-523; Tr. 11 136:9-14. Furthermore, Highland's Assistant General Counsel, Isaac Leventon, testified that neither he, nor, he was certain, anyone else at Highland, consulted with outside counsel in January 2016 regarding taking the Deferred Fees. Tr. 7 236:11-24. When Highland executed on its "position" by paying itself the Deferred Fees in January and again in early April, Highland did not disclose the self-payment to its independent auditor or the Redeemer Committee.

6. It was not until April 11, 2016, almost a week after it took the second tranche of Deferred Fees that Highland belatedly informed its independent auditor, PriceWaterhouse Coopers (PwC), of what it had done by sending it draft financial statements for the year ending December 31, 2015, in which Highland disclosed, without explanation, a "change ... related to how [they were] ... treating the deferred fee distribution." RC-288. On April 12, a meeting was held between Highland and PwC, at which PwC sought an explanation from Highland for the change in position and asked for a memorandum from Highland's counsel and a "copy of the letter that was sent [to the Redeemers Committee] notifying them of the position," JX-28.

7. On April 12, Highland proceeded to have, apparently for the first time in 2016, discussions with Akin Gump about a justification for its taking the Deferred Fees prior to "complete liquidation." According to Akin Gump's billable time records, on April 12, there was a telephone "call with Thomas Surgent regarding interpretation of distribution plan and charging of fees during period of TRO." Following that call, on April 19, there was another call with Mr. Surgent and Mr. Leventon "regarding audit disclosures with respect to legal doctrine applicable to fee dispute…," following which an Akin Gump attorney started to draft a memo on the "impossibility" issue. After further calls and discussions regarding the drafting of the disclosure to the auditor, a memorandum was finalized and sent to PwC on April 22, 2016, the day that the financials were issued. See RC-523; Tr. 11 136:9-14.)

8. Although Mr. Ellington testified the Akin Gump memo was "entirely generated by Akin Gump," without any participation by anyone from Highland, Tr. 10 189:14-21, there is contrary and indisputable evidence that, in fact, someone at Highland drafted footnotes to the financials that were then provided to Akin Gump and appear in the Akin Gump memo, see Tr. 7 283:19-284:9; compare RC-289 with HC-277. Further, Mr. Leventon exchanged with Akin Gump and commented upon at least four separate drafts of the Akin Gump memo before it was finalized. RC-291; RC-295; -RC300; RC-302; JX-29; Tr. 7 291:4-295:19.

9. We find that Highland made a deliberate and calculated decision to make no disclosure to the Committee of the actual taking of the Deferred Fees until the issuance of the 2015 financial statements on April 22, 2016, but that, in the course of communicating with PwC about its "position," Highland allowed PwC to conclude that it had informed the Redeemer Committee of its position regarding the payment of the Deferred Fees, and did not correct the misimpression. RC-441. It did so to induce PwC to provide the opinion Highland needed to have clean financials.

10. This was not the first time that Highland had sought to use the so-called "impossibility defense" as a basis for suspending its obligations under the Plan. In 2013, Highland had proposed to use the doctrine in an attempt to avoid making distributions pursuant to the Realization Schedule, attached to the Plan and Scheme. Highland's then-outside counsel, Christopher Panos, now a federal bankruptcy judge, was asked to provide an opinion to allow such action but he expressed strong reservations about the use of that doctrine in an affirmative context, RC-153.

11. Thereafter, Highland tried to secure another opinion that would be more supportive of its position and received a PowerPoint presentation from Akin Gump in November 2014, HC-356, that provided some additional arguments but, ultimately, focused on the doctrine being able to be used only as a defense, see, e.g., HC-356 at 16.

12. Finally, when in early 2015, Highland asserted to Committee counsel that, by reason of the UBS TRO, "all applicable distribution dates, distribution thresholds and fees payable" were tolled, by reason of the UBS TRO, JX-22, Committee counsel had strongly rejected such use of the TRO to attempt to justify Highland's failure to meet "either the Realisation Schedule or the distribution threshold for the Deferred Fee Account." RC-219.

13. Notwithstanding two prior and unsuccessful attempts to use the doctrine to evade its obligations, Highland was not deterred and in late 2015 and early 2016, with the assistance of its inside counsel, but not on the advice of Akin Gump,planned for and then executed on the strategy to take the Deferred Fees.

14. Under New York law, the doctrine of impossibility does not create an affirmative right to engage in any conduct; rather, under certain circumstances, it acts as a defense to claims of breach of contract. When an unforeseeable event, such as an injunction, occurs, and the actions of the non-performing contract party have not contributed to the occurrence, and the occurrence renders the performance of a contractual obligation objectively impossible, a party's contractual obligation can be excused. Kel Kim Corp. v. Cent. Mkts., Inc., 70 N.Y.2d 900, 902 (1987) ("While such defenses [as impossibility] have been recognized in the common law, they have been applied narrowly, due in part to judicial recognition that the purpose of contract law is to allocate the risks that might affect performance and that performance should be excused only in extreme circumstances"); JJ. Cassone Bakery, Inc. v. Consolidated Edison Co. of New York, Inc., 168 Misc.2d 272, 278, 638 N.Y.S.2d 898 (N.Y. Sup. 1996), rev'd in part on other grounds, 240 A.D.2d 634, 659 N.Y.S.2d 293 (2d Dept. 1997). Absent such factors, the doctrine of impossibility is not available to excuse a party's performance and cannot be used to justify affirmative conduct.

15. Highland attempts to squeeze itself into the four conditions, but its effort fails. First, Highland argues that it is defending itself against accusations of breach of contract by invoking, defensively, the impossibility defense. But it is Highland's illegitimate use of the impossibility defense to justify an affirmative act — the taking of the Deferred Fees — that is under attack, not its citation of the impossibility defense in 2018 as a defense to its breach of contract in 2016.

16. Highland also argues that the TRO "rendered the complete liquidation of the Fund under the Plan's Realization Schedule objectively impossible." Closing Brief at 61. But Highland confuses the Realization Schedule which deals with timely distributions with the Deferred Fees which come into play only upon complete liquidation of the Fund with no deadline. Plan §2.02; Scheme §1.5.2. In any case, when the UBS TRO was dissolved on January 21, 2016, there was nothing that prevented Highland from completing the liquidation.

17. None of the factors allowing the doctrine of impossibility apply to the taking of the Deferred Fees. Indeed, we find that Highland — and its inside counsel —knew none of the factors were applicable when Highland asserted the defense. First, the UBS TRO was not unforeseeable; in fact, as Mr. Panos had advised his client in 2013, "UBS had already filed suit and was threatening to get an injunction at the time of the approval of the Scheme." Second, Highland's own acts gave rise to the UBS TRO, as it was UBS's accusation of Highland's fraudulent transfer of assets that gave rise to the TRO, as Mr. Panos again had advised Highland. Third, as Mr. Leventon himself testified at the hearings, "the TRO did not do away with Highland's obligation to complete liquidation of the fund." Tr. 7 262:6-10. Finally, the doctrine of impossibility gives rise to no affirmative rights to take action in violation of a contract. Once again, Mr. Panos had given this critical advice to Highland in 2013.

18. We have considered the other elements of Highland's defense to this claim and find them similarly wanting. We find that Highland's paying itself the Deferred Fees in 2016 constituted a breach of both the Scheme and Plan. Given that finding, we need not reach the issue of whether the self-payment also constituted a breach of fiduciary duty by Highland to the Committee.

19. As to remedy, under New York law, damages may be awarded for a breach of contract based upon the damages suffered by the claimant. Here, the damage suffered is the full amount of the Deferred Fees prematurely taken, plus prejudgment interest from the date of the taking. "Prejudgment interest is generally granted 'in order to compensate the injured party for the loss, over a period of time, of the use of the property to which it was entitled.'" Panix Prods., Ltd v. Lewis, 2003 WL 21659370, at *2 (S.D.N.Y. 2003)(citing Lewis v. S.L. & E., Inc. 831 F.2d 37, 40 (2d Cir.1987)). Although Respondent has raised good arguments as to why the interest rate should be nominal at best, we exercise our discretion to award statutory pre-judgment interest at 9% from the date of the taking, so as to measure as accurately as possible the totality of the damage that we perceive the Fund suffered by reason of the Deferred Fees being taken prematurely.

20. Respondent also argues that the Tribunal lacks the authority to order a return of the moneys taken. But measuring the damages suffered by the Fund by referencing the full amount of the Deferred Fees taken is not the same as literally ordering a return of the moneys. It is an appropriate measure of the damages because the Fees were to have stayed within the Fund until they were appropriately earned, and while in the Fund, they were to serve as a protection and cushion against creditors. In addition, very importantly, keeping the Deferred Fees was to have acted as an incentive to Highland to complete liquidation of the portfolio, an event that had not occurred when Highland was terminated and still has not occurred. Taking the Deferred Fees deprived the investors of all of those benefits. The Deferred Fees in the amount of $33,313,000 should be returned in full, and with full statutory interest of 9% from the dates of taking in January and April 2016 through the date of this Partial Final Award.

C. Distribution Fees

1. Under the Plan, Highland was to receive fees in the amount of 125 basis points based on "all amounts actually Distributed to Redeemers during each quarter following the Effective Date . . . provided that assets equal to or in excess of the amount scheduled in the Realisation Schedule have been distributed to Redeemers during such quarter (with amounts distributed to Redeemers in excess of scheduled distributions for prior quarters being carried over.)" (Emphasis added) (Plan §2.01; Scheme §4.4.)

2. Claimant alleges that Highland breached the provisions of the Plan by paying itself distribution fees totaling $14.5 million despite not having "actually" distributed to the Redeemers each quarter the minimum required to have been paid by the Realisation Schedule (Plan Appx. A). The Committee alleges that Highland paid itself distribution fees eight times, but that the only time Highland met or exceeded the goals set by the Realization Schedule was in the quarters ending January 31, 2013, and April 30, 2013. Other than those two quarters, Claimant contends that Highland missed the target in every other time period. Claimant also charged Highland with a breach of fiduciary duty, arising out of similar facts.

3. The Committee alleges that six of the distribution fee payments were improper because Highland improperly calculated the amount paid to the Redeemers in one or more of the following ways: (1) in treating Deferred Fees as Distributions; (2) in withholding tax obligations from payments to Redeemers, but counted them for purposes of qualifying for its fee; (3) in improperly including amounts that it reserved to pay Barclays, amounts used to pay the Barclays settlement, and amounts paid to its affiliate Eames in its calculation of Distributions; and (4) in borrowing on margin and improperly treating such borrowings as "excess cash" under the Plan and, therefore, as Distributions.

4. In addition, Claimant argues that if Highland missed any quarterly hurdle set in the Realisation Schedule, its deficiency would carry over to the next quarter, giving Highland an accordingly higher hurdle, or watermark, to meet in that next quarter. In other words, Claimant urges that the Realisation Schedule was intended to be cumulative.

5. Cumulative Quarterly Hurdles

a) Starting with the last issue first, the language in the Plan in question is as follows: "HCMLP will receive fees in cash ... (b) provided that assets equal to or in excess of the amount scheduled in the Realisation Schedule have been distributed to Redeemers during such quarter (with amounts distributed to Redeemers in excess of scheduled distributions for prior quarters being carried over)." HC-300 at 74 (emphasis added). Plan §2.01.

b) Claimant argues that, although the foregoing language is not explicit regarding both the positive and negative cumulative nature of the Realisation Schedule, there is evidence sufficient to establish that requirement from the text itself and from the testimony of those who negotiated the clause in the Plan, citing the testimony of Mr. Montgomery ("The Realisation Schedule was a cumulative concept. 100 million during one period, 100 million to the next, 200 million during the next. . . . it was designed to be cumulative. It was a stack.") Tr. 3 307:5-19. The Committee also points out that Highland kept internal accounting schedules that treated the Schedule as cumulative, including RC-364 at pp. 10, 23, 36, 49, 62, 75, 88, 101, 114, 127, 140; see also Tr. 4 196:17-197:19; Tr. 9 256:14-259.

c) Finally, the Committee urges that there would be "perverse incentives" if Highland were allowed to treat the Schedule as cumulative if it got ahead of the distribution schedule but not if it fell behind, because if Highland knew it could not make a quarterly target, it would have the incentive to skip that quarter and wait until the next quarter where it would meet the Realisation Schedule for only that quarter. This would have the undesirable effect of delaying liquidation but not adversely affecting Highland's receipt of incentive fees.

d) Highland strongly urges that the clause in question is unambiguous in requiring only a positive carry-forward, with no hint that a failure to meet a quarterly hurdle imposed an obligation to reach a high water mark that would meet both the prior hurdle and the present quarterly hurdle. In addition, Highland argues that, as Mr. Montgomery conceded on cross-examination, the Plan could have contained a cumulative shortfall provision, but that the inclusion of such language was never discussed with Highland, Tr. 3 at 308:7-13, and such could have been incorporated into the Plan had that been the Parties' intent.

e) Highland also criticizes the Committee's "perverse incentive" argument, arguing, first, that Highland was highly incentivized to liquidate as quickly as possible so it could receive Distribution Fees during the pendency of the 36-month Realisation Schedule (§2.02) and obtain the $10 million Deferred Fee by distributing $1.7 billion within 43 months of the Plan's Effective Date (§6.02); and, secondly, "if Highland fell too far behind," it would lose its incentive to continue expeditious liquidation of the Fund's assets. Respondent's Post-Hearing Brief at 57. See Tr. Day 12 at 169:3-18 (Snow).

f) In interpreting the section of the Plan, it is significant that the language regarding a positive carry-forward appears in a parenthetical phrase, not in the main operative text. Without considering the parenthetical, we read the main operative text as setting a test that Highland has to meet — each quarter, assets "equal to or in excess of the amount scheduled in the Realisation Schedule" must be distributed to Redeemers, or else Highland will not "receive fees in cash" that quarter. Thus, each separate quarter, Highland has to make a required distribution or will not be paid fees. But if each quarter there is a test that Highland has to meet, it would defeat the purpose of the quarterly test for Highland to be able to garner fees by just meeting the goal for one particular quarter without regard to how it had performed the prior quarter. Without a reward or a penality each quarter dependent upon whether it met (or exceeded) the goal, Highland could undermine the objective of the clause. The supplemental parenthetical phrase simply makes explicit one benefit to Highland of overachieving such quarterly goal. We conclude that §2.01 requires both a positive and negative cumulative process.

g) To read it otherwise would create a perverse incentive of encouraging Highland to skip quarters. The contrary is not true: by having both a positive and negative cumulative obligation, Highland loses no incentive to continue to liquidate, perhaps at a faster pace than it in fact adopted, if it were to fall behind.

h) Though we reach our conclusion without need to rely on extrinsic evidence, we note that our interpretation is supported by Mr. Montgomery's testimony regarding Highland's request to include a parenthetical to make clear that it would not lose the benefit of an over-distribution and could carry it forward. See JA Apparel Corp. v. Abboud, 568 F.3d 390, 397 (2d Cir. 2009).

D. Deferred Fees as Distributions

1. With respect to Highland's treating Deferred Fees as Distributions, the Committee urges that Deferred Fees being reserved in an account for possible later distribution were not amounts "actually Distributed" or the kind of Distributions made to Redeemers as part of the return to them of their investment.

2. Highland defends on the basis that the Committee's position that Deferred Fees should not be included in calculating Distribution Fees is inconsistent with the parties' course of performance. From the outset, Highland argues that it included Deferred Fees in its calculation of Distribution Fees and gave written notice of its inclusion to the Committee on at least four occasions. HC-552; HC-591; HC-592; HC-593. However, Highland is not making the argument that the Plan was amended by what it says was its known conduct.

3. Highland also argues that its successor, A&M, also included Deferred Fees in its calculation of Distribution Fees based upon the substantively identical language in the A&M investment management agreement, HC-56 at 6, and received a Distribution Fee based on that calculation in October 2016.

4. We find that whether Highland's conduct was disclosed to the Committee or whatever A&M may have done are both irrelevant to the issue in this case, because, as we analyze the evidence adduced, the only relevant issue is whether including Deferred Fees in the calculation of Distribution Fees is authorized by the language of the Plan, and we find that it is not.

5. The Plan sets forth a program of fees capable of being paid to Highland: if Highland met certain quarterly goals of distributions made to Redeemers, as set forth in the Realisation Schedule, it was entitled to receipt of certain Distribution Fees; if it distributed at least $1.7 billion to the Redeemers prior to the 43d month following the Effective Date, it was entitled to receive payment of the fees in the Deferred Fee Account in accordance with Section 2.02 of the Plan.

6. The Plan distinguished what Highland had to do to qualify to receive each category of Fees. With respect to Deferred Fees, the Plan provides that "Highland shall not be deemed to be a Redeemer in respect of the deferred fees." We read that sentence as making clear that Highland's setting aside of Deferred Fees into a account that it might eventually be able to draw upon should not be construed as a form of distribution such that, if it were a Redeemer, it could be construed as an "actual" distribution. Because Highland is not "deemed to be a Redeemer," its payment to a fund is not equivalent to a Distribution to an investor.

7. We find that this language is not ambiguous and does not allow for the practice used by Highland to beef up the amount of Distribution Fees it received.

E. Withholding Taxes as Distributions

1. The evidence at the hearing was that, as required in the Plan, HC-300 at 80, Highland took into account the amount of taxes that should be withheld and paid those amounts to the appropriate taxing authorities; however, Highland also included those withheld amounts in the calculation of amounts "actually" distributed to Redeemers. The Committee contends that such withheld amounts were not "actually Distributed to Redeemers," and points out that, in fact, only a subset of Redeemers — the Offshore Fund investors — were subject to tax withholding, RC-62; Tr. 9 275:5-23, while some investors were nonprofits that did not pay taxes at all, Tr. 12 167:5-24. The Committee also points out that, when first informed in 2012 that Highland had counted tax withholdings toward the May 1, 2012 Distribution, the Committee objected, demanding successfully that Highland make up that shortfall. RC-68; Tr. 3 301:6-12; Tr. 9 278:4-279:16.

2. Highland makes two points in its defense: first, tax withholdings made on behalf of an employee are considered "compensation," so tax withholdings for Crusader investors should also be treated in a "common-sense manner" as "distributions" to those investors; and second, Highland disclosed its methodology in at least one monthly report in November 2013, HC-591 at 14 (Nov. 2013 Summary Report), to which the Committee never objected.

3. We need not consider either of these defenses because we find the language of the Plan supports the treatment by Highland of these amounts. As stated above, "Distributions" is defined as "Amounts to be paid to Redeemers under the Plan, including amounts to be paid to Redeemers under the Scheme..." §1.01. The operative language regarding withholding for taxes is as follows: "In connection with ... all Distributions to be made hereunder, the Crusader Funds shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any ... taxing authority, and all Distributions hereunder shall be subject to any such withholding ... requirements. The Crusader Funds are hereby authorized to take any and all actions that may be necessary or appropriate to comply with any such requirements."

4. Read together, we find that "the amounts paid to Redeemers" were "subject to ... withholding requirements" and thus, were appropriately included within the calculation of amounts distributed to Redeemers, even if, in fact, it was an indirect payment. We find for Highland on this branch of the Committee's claim.

F. Payments to Barclays and Eames as Distributions

1. In 2006 and 2007, Barclays and a Highland affiliate entered into two securities transactions — a prepaid forward transaction and an accreting strike option transaction. In connection with those two transactions, Barclays became an investor in the Highland Funds. JX-5. In late 2008, Barclays submitted redemptions for its full interests in the Highland Funds, which Highland did not honor. Litigation between Barclays and Highland entities ensued. When the Plan and Scheme were adopted, Barclays did not consent and became what it is referred to as a Non-Consenting Redeemer. HC-300, at HC-300.0075.

2. Thereafter, when Fund assets were disposed of and amounts distributed to Redeemers, no amounts were actually paid to Barclays; instead, amounts equivalent to those that Barclays would have received if it was a Consenting Redeemer were paid into the Redeemer Trust Account. That Account was set up for the purpose of segregating the deposited funds so they could be "used to pay all costs of HCM-Related Parties and the Redeemer Committee to defend, respond to, settle and satisfy any Claims by Crusader Fund Redeemers excluding Plan Claims ("Redeemer Claims") and ... to defend, respond to, settle and satisfy any such Redeemer Claims in advance of any amounts otherwise properly available for such purposes out of the assets of the Crusader Funds." Plan 6.01.

3. Notwithstanding such amounts remained in a designated account at a major financial institution, Highland treated such reserves as "actual" Distributions and paid itself fees based on the amounts reserved. The Committee argues that amounts reserved in the Redeemer Trust Account were not "actually Distributed" and that fees taken by Highland for such deposits were taken in breach of the Plan.

4. We find that Highland's treatment of the reserves as Distributions violated the terms of the Plan.

5. In July 2012, Highland, Barclays, and other entities entered into a settlement agreement, resolving all of the claims between and among them. JX-5. As part of the settlement, Barclays received both the cash reserved since August 2011 and several additional cash distributions expected between July and December 2012, essentially the exact distribution amounts that it was entitled to as a Consenting Redeemer. Tr. Day 9 at 146:12-19 (Palmer); HC-275; HC Demo 10 at 4. Pursuant to the settlement, Barclays became a Consenting Redeemer, see JX-5 at 12 (§ 11.3). Highland treated such portion of the settlement payments as "Distributions" and paid itself the fees associated with that amount of Distributions. The Committee contends that any payments to Barclays were in settlement of various claims, in exchange for which there was a "relinquishment and/or abandonment" of all of Barclays' rights and interests in the Highland Funds, JX-5 at 3, and, thus, such payments were not Distributions.

6. Finally, as part of the settlement, the two limited partner interests that Barclays had in the Funds were transferred to a newly-formed and wholly-owned affiliate of Highland, Eames; amounts equivalent to what Barclays would have received as an investor after the settlement were paid to Eames, totaling $35.1 million, and Highland treated such amounts as Distributions and paid itself the appropriate fees. The Committee urges that the transfer of LP interests was in violation of Section 2.05(f) which gives that the Committee "the authority to approve or disapprove the assignment or transfer of interests in the Feeder Funds or Plan Claims," HC-300, and that the transfer was explicitly disapproved, RC-79 ("The Crusader Redeemer Committee does not believe that Highland has the right to take assignment of Barclays' interest in the Crusader Fund. The Committee believes its approval is required for any such assignment under the Plan/Scheme, and the Committee is not willing to approve that assignment."). Furthermore, the Barclays Settlement Agreement provided that the settlement was subject to Highland's receiving all necessary approvals under the Crusader Plan of Liquidation, which the Committee contends Highland did not receive. HC-330, §12.3.2, at HC-330.0014.

7. Highland argues, first, that the Committee's right to approve or disapprove of the transfer of interests under Section 2.05(f) is not applicable because under Section 2.05(g)[3], the Barclays settlement did not give Barclays more than it would have received as a Consenting Compulsory Redeemer; that, in any case, 2.05(f) is subject to the "reasonableness" test under Section 2.07[4]; and, finally, that it was entitled to keep the LP interests because the LP interests were in the Redeemer Trust account, citing to HC-275. We find that Highland breached the Plan and Scheme by transferring the LP interests to a wholly-controlled affiliate after the Committee had specifically disapproved of the transfer. Its rejection was reasonable in that it was acting in the best interests of the other investors to have a smaller investment base that would have a greater portion of the asset distributions. The accounting ledger maintained by Highland, which created much confusion at the hearing, was not evidence that the LP interests were in the Redeemer Trust account; we agree with the Committee that the spreadsheet was an accounting convenience for Highland.

8. We also find that Highland breached the Plan by taking fees in connection with amounts reserved in the Redeemer Trust Account; by no stretch of the imagination could one reasonably conclude — or argue — that an amount reserved in an account that was available to settle and pay costs in connection with all forms of Redeemer Claims could be considered as amounts "actually Distributed" to Redeemers. In any case, with respect to the amounts reserved, no Redeemer received any Distribution in the quarters when Highland claimed fees.

[3] "The Redeemer Committee will have, subject to the execution and delivery of customary and reasonable confidentiality agreements:... (g) the authority to approve or disapprove any settlement by the Crusader Funds with Barclays that would be in excess of what Barclays would receive as a Consenting Compulsory Redeemer..."

[4] "The approval of the Redeemer Committee with respect to any matter submitted for approval under Sections 2.05 or 2.06 shall not be unreasonably withheld."

9. We also find that Highland breached the Plan by taking fees in connection with amounts reserved in the Redeemer Trust Account; by no stretch of the imagination could one reasonably conclude — or argue — that an amount reserved in an account that was available to settle and pay costs in connection with all forms of Redeemer Claims could be considered as amounts "actually Distributed" to Redeemers. In any case, with respect to the amounts reserved, no Redeemer received any Distribution in the quarters when Highland claimed fees.

10. Finally, we find that when Barclays received the amounts, as part of the Settlement Agreement, that had been set aside in 2012 as if Barclays was then a Consenting Redeemer, it did not receive such amounts as Distributions "actually" paid to a Redeemer but rather as part of the Settlement amount. Although Barclays was "deemed" to have become a "Consenting Redeemer," it had that status only for the moment in time sufficient to transfer its LP interests to Eames. As the Settlement Agreement noted, "certain payments will be made by the Highland Entities to Barclays … in consideration of the settlement of the Claims hereunder and the assignment, relinquishment and/or abandonment by Barclays of all rights and interests it had in the Fund Interests…" HC-330 at HC-330.0003. Highland breached the Plan by treating the amounts paid to Barclays as if they had been received as a Consenting Compulsory Redeemer as Distributions.

11. We conclude that it was improper for Highland to include in the calculation of the amounts distributed to the Redeemers:

a) The Distribution Fee attributable to the amounts reserved in the Redeemer Trust Account;

b) The Distribution Fee attributable to the amounts paid in settlement of the Barclays claims; and

c) The Distribution Fee attributable to the value of the LP interests and amounts transferred to Eames.

G. Margin Borrowings as Distributions

1. In January and April 2012, Highland caused the Fund to borrow $60 million from its Jefferies brokerage account to distribute to Redeemers. The Committee contends that it did so because Highland had not liquidated enough assets to meet the Realisation Schedule. After learning about the loans in September 2012, the Committee protested and directed Mr. Dondero at the September 2012 meeting to take no further margin loans without its consent. Tr. 2 353:2-22; RC-85; JX-8. The Committee contends that Highland's taking such margin loans to reach the Realisation Schedule and then paying itself Distribution Fees based on having reached the quarterly goal with the assistance of the margin borrowing breached the Plan because the margin borrowing did not constitute Excess Cash resulting from the liquidation of assets from which Distributions must come. Plan §§1.01, 3.01; Scheme §§2.4.1, 2.4.2.

2. Highland maintains that, as it was authorized under the Plan, to engage in margin borrowing, and that amounts were actually distributed to the Redeemers, such payments to the Redeemers were appropriately treated as Distributions qualifying it to receive Distribution Fees.

3. We find that such margin borrowings, which were authorized under the Plan, did not qualify as the type of Distribution that would entitle Highland to receive a Distribution Fee. The plain language of the Plan requires that any Distribution Fee be paid to Highland only upon the appropriate amount of Excess Cash having been accumulated from the sale of "assets equal to or in excess of the amount scheduled in the Realisation Schedule…" The "assets" referred to are the "assets, respectively, of the Onshore Fund, Offshore Fund I and Offshore Fund II…" §2.01. No such assets were sold and therefore no Excess Cash was accumulated to be distributed to the Redeemers.

4. The Committees expert, Mr. Imburgia, determined that the result of Highland's including the above improper items in the calculation of Distributions to Redeemers in calculating its entitlement to Distribution Fees, resulted in Highland paying itself Distribution Fees to which it was not entitled by an overpayment of $14,452,275 in Distribution Fees. The Committee is entitled to judgment in that amount plus interest at the rate of 9% from the date of each improper fee. RX 408, Schedule 2.1

H. Purchase of Plan Claims[5]

1. From December 2013 through January 2016, Highland purchased twenty-seven Plan Claims from Crusader investors for itself, without the approval of the Committee [Tr. 5 50:5-8.] The Committee contends that such purchases breached the Plan, because if it had known that the Plan Claims were available for sale, it would have exercised its ROFR. Tr. 3 163:11-24; Tr. 4 389:3-390:23. The Committee urges that the UBS TRO, said by Highland to block any purchases by the Fund during its pendency, does not in fact bar such purchases; in any event, the Committee points out that it is conceded that the Fund had assets other than the allegedly restrained assets with which to make purchases outside of the restrained assets. The Committee seeks damages equivalent to the value of the Claims at the time they were sold, any profits or benefits realized by Highland, and pre-judgment interest at 9%, for a total of $8,897,899 plus interest.

2. Highland raises a number of defenses. First, it argues that, during the period that the TRO was in effect, the Committee agreed with the advice given by the Fund's (and Highland's) counsel in the UBS case, Lackey Hershman, that the TRO, at minimum, prevented the Fund from spending cash to buy-out other investors before UBS's claims were resolved. See Tr. Day 7 at 319:17-332:3. Thus, Highland contends that the Committee cannot prove it would have purchased the Claims had they been offered to it.

[5] Plan §1.01: "Plan Claim. The claim of a Redeemer to payment of, or based upon, the Redemption Amount relating to the redemption of its shares or withdrawal of its capital account balance, as the case may be, in the Crusader Funds as detailed in Section 4.01."

3. But the record doesn't support that interpretation. First, refuting the idea that the Committee agreed with the advice being relayed to them is the exchange of correspondence between counsel for the Committee counsel and Highland set forth in RC-360, in which Committee counsel rejected the advice said to have been received from outside counsel, and stated how the Plan Claims should be dealt with if Highland were to persist in asserting that the TRO so blocked the Committee's exercise of its ROFR: "the Committee does not agree with Highland's interpretation of the UBS TRO because the expenditure of money to redeem interests is not a "Distribution" and, in any event, if Highland feels strongly that it cannot use the Funds' assets in this way, any acquisition of the interests by Highland or an affiliate is subject to the Committee's exercising its rights under Section 5.04 when the TRO is lifted or when the interests can, in Highland's opinion, be acquired by the Fund consistent with the UBS TRO. Otherwise, the Committee did not approve of the transfer of the Scheme Claims." RC-360 at 87-88.

4. Furthermore, before the TRO, when presented with the opportunity to purchase Plan Claims, the Committee exercised its right of first refusal (ROFR) on five occasions, see RC-358. During the pendency of the TRO, the Committee was informed about only five of twenty-eight Plan Claims purchases and disapproved each of the purchases by Highland, but the disapprovals were ignored. The Committee informed Highland that it disagreed about the scope of the TRO but that if Highland, as Fund Manager believed the TRO prevented the Fund from purchasing the Plan Claims, then it would be consistent with the Committee's ROFR for the right to be exercised when the TRO was lifted. HC-580.

5. We find that the Committee would have exercised its ROFR if it had been given full information and had not Highland been preventing the exercise of the ROFR by invoking the TRO and misrepresenting to buyers that it had the ROFR.

6. As a second defense, Highland contends that during the period that the UBS TRO was in effect, it relied on advice of counsel that the TRO prevented the Crusader Fund from acquiring any Plan Claims, thus opening the door for Highland to purchase the Plan Claims that would otherwise have been subject to the Committee's ROFR under §§2.05(f)[6] and 5.04[7] of the Plan.

7. Mr. Leventon testified that the TRO was obtained by UBS in response to UBS's allegation that Crusader Funds had participated in a fraudulent transfer of assets from a UBS debtor; the TRO restricted transfer of assets but because those assets had been acquired about four years previously and disposed of in the ordinary course of business, "the UBS TRO was essentially designed to 'collateralize' UBS against the March 25, 2009 asset transfer. And if they couldn't be collateralized with those exact assets and the exact actual cash ... or cash equivalent, then it had to be collateralized with something else. And that something else was the assets of the fund." Day 7 at 328:12-20. That testimony would suggest that from the moment that the TRO went into effect, the Fund was under constraints not to purchase any Plan Claims or other assets.

8. But this explanation is not convincing. Regarding the advice received from Lackey Hershman, Mr. Leventon testified that the majority of the advice received was orally and over time, and that the advice was "an evolving interpretation" that "crystallized...in the first quarter of 2014." Id. at 330:9-17. The advice consisted of "a bunch of verbal conversations, but a lot of that advice is embodied in that memo [HC259] that Lackey wrote to the Crusader Fund. Because we wanted the Committee to understand our quandary." Day 7 at 319:17-332:3 (Emphasis added).

[6] Plan §2.07(f): "The Redeemer Committee shall have ... the authority to approve or disapprove the assignment or transfer of interests in the Feeder Funds or Plan Claims; provided that such proposed assignment or transfer shall be deemed to be rejected if not affirmatively approved in writing within 30 days of submission to the Redeemer Committee..."

[7] Plan § 5.04: "No assignment or transfer of a Plan Claim after the Effective Date may be purchased by [Highland] or its affiliates without such Plan Claim first being offered to, and rejected by, the Crusader Funds."

9. The Lackey Hershman memo, dated July 23, 2014, HC-259, deals only with the practical consequences of seeking an amendment to the UBS TRO while an appeal was pending, and does not provide any advice regarding the scope or interpretation of the UBS TRO.[8] Notably, there is no other document from Lackey Hershman presented at the hearing, even including emails, that supports Mr. Leventon's explanation.

10. Perhaps in recognition of the thin basis for its claim that it relied on the advice of counsel, Highland requests that the Panel draw no inferences from the "relatively few written communications on this issue," because there was, Highland contends, "unrebutted testimony" of the "contemporaneous advice of counsel." Highland points to a letter from an internal counsel at Highland to the Committee that cites advice from outside counsel regarding the effect of the TRO on the Committee's ability to purchase Plan Claims, RC-360 ("outside counsel to HCMLP has advised that the temporary restraining order which has been imposed by the Court in UBS Securities LLC et al. v. Highland Capital Management, L.P. prohibits the Crusader Funds from purchasing the Scheme Claims using assets of the Crusader Funds").

11. The statement by internal counsel is the type of hearsay that was received in evidence only because this was an arbitration but to which, under the circumstances, we accord little substantive weight. We find more persuasive the absence of any writing, even an e-mail, directly from the law firm regarding the scope of the TRO and restrictions against the Fund using its assets to purchase Plan Claims or similar items.

12. Further, we find that, even before the TRO went into effect, and thus well before any advice from counsel would have been received, Highland was laying the groundwork for purchasing the Plan Claims for itself and bypassing the Committee's ROFR.

[8] On questioning by members of the Panel, Mr. Leventon referred to the Lackey Hershman memo in broad terms:

> "As set forth in the Lackey memorandum, which we all have, Lackey reported that UBS said that, Crusader and Highland Credit Strategies could neither distribute cash to anybody, nor sell assets, nor make any payments outside of the normal course of business...ARBITRATOR BRODSKY: Is the Lackey Hershman memo you're referring to the one that is HC-259, dated July 23, 2014? THE WITNESS: I believe that's correct. ARBITRATOR BRODSKY: I don't see any reference to conversations relayed to you by counsel about what UBS said. I see a sentence on page RC-3208 at the top, it says, "UBS counsel stated that they're not willing to enter into such a stipulation unless Crusader provided detailed discovery of its cash and asset holdings," et cetera, et cetera. Is that what you were referring to? THE WITNESS: Yes. They were not willing to modify the TRO in order to permit the sale of assets unless Credit Strategies, Crusader and other defendants handed over detailed financial information that they would not otherwise be entitled to in discovery. And we were advised that that was a prohibitive risk."

Day 8 170:10-17, 173:4-174:7.

13. On May 29, 2013, Highland caused the Board of the Master Fund, which it controlled, to adopt a resolution, as follows: "Whereas, ... (2) certain investors from time-to-time desire to sell their interests as redeemed, unpaid shareholders, in the Company ... (any such shares, 'Offered Shares'); (3) one or more principal accounts (the "Related Accounts') in which James Dondero ... and/or Highland ... have material, direct and indirect, financial and ownership interests, have enters a bid to purchase certain of Offered Shares; (4) the bid of the Related Account(s) is equal to or greater than the highest bid; ...Now Therefore Resolved That (1) the undersigned Directors hereby consent to the Proposed Transaction and any future transfers of Offered Shares to the Related Account(s)..." RC-276 at 5; Tr. 7 63:25-68:14.

14. This pre-approval of transfers of interests in the Fund to Mr. Dondero, Highland, or its affiliates does not reference the Committee's ROFR, but it enabled Highland, falsely, to claim that it had a ROFR. Using that Resolution, Mr. Leventon informed multiple investors interested in possible transfers of their interests, that Highland had a ROFR to purchase any Plan Claims, never mentioning the Committee's prior and superior ROFR. RC276[9]; RC280; RC434. This conduct alone constituted a breach of the Plan, because it deprived the Committee from having any insight into the transactions as to which the Plan gave them rights to purchase the underlying interests.

15. Furthermore, by the time Highland received the Lackey Hershman memo in July 23, 2014, Highland had purchased fourteen Plan Claims, nine of which were not disclosed to the Committee. Thereafter, Highland purchased another thirteen Plan Claims without any disclosure to the Committee. Mr. Leventon testified that the only reason for Highland not to consult the Committee about the 27 purchases in 2013, 2014, and 2015 was its interpretation of the TRO. Day 7, 172:2-10.

16. Additional actions by Highland further demonstrate that the reliance on the TRO was a facade, designed to enable Highland to attempt to purchase a majority interest in the Fund without the Committee's knowledge. In May 2014 and again in January 2016, Highland hired a broker to solicit all Fund investors, except those who were on the Committee, to buy their interests at half or approximately half of the NAV that Highland had itself set. RC417; Tr. 7 95:8-20, 96:8-23; RC425.

[9] "By way of Written Resolution, the Board of Directors of [the Fund] determined that if the Investment Manager or an affiliate offers to purchase the shares in the Fund, then that bid shall be accepted if it is the highest bid. See Written Resolution of the Directors of the Fund dated May 29, 2013. The Board may, in its absolute discretion, approve transfers. ... Accordingly, the Investment Manager, as authorized by the applicable documents, hereby bids 60.25 cents of NAV for purchase of 100% of Crown Alpha's capital balance as of the November 2015 NAV date"

17. The broker, Wake2O, used talking points drafted by Highland that misrepresented on whose behalf Wake2O was acting, represented, without apparent foundation, that the offering price of 50% or 55% of NAV was "[t]he current best market bid" and that price would go down in the future, and, finally, that the TRO prevented the Fund from making distributions and that the Fund held many illiquid assets. RC420; Tr. 7 101:4-11 ("Q: And so one of the things that Highland wanted Wake to convey to investors was, hey, you might want to sell your interest in Crusader because right now there's this TRO and you're not going to be able to get any distributions, right? A.· · That's probably a fair paraphrasing.").

18. Throughout Wake2O's engagements, it was under pressure from Highland's CEO to pursue investors so that Highland could obtain a greater share of the Fund. See, e.g., RC-250 ("[K]eep pushing as much and many as quickly as possible....")(August 2015); and RC-426 ("Our CEO is keen on starting the process as soon as possible. Please let us know if we can start Monday.") (January 2016); Tr. 7 135:6-137:18.

19. It was also in this period that Highland undertook a renewed effort to keep the Redeemers Committee in the dark about their purchasing activities. Mr. Leventon was significantly involved in providing direction, as well as drafting talking points, to Wake2O to "reach out to all non-committee members," (emphasis added); Tr. 7 146:16-149:7. Highland offered Wake2O an incentive fee to acquire interests representing $200 million of NAV, but made clear to Wake2O that they should try to achieve that goal without contacting members of the Redeemer Committee. Tr. 7 157:13-161:2. The amount of $200 million was not an accidental target; it was just $4 million of NAV more than what the Redeemer Committee held, Tr. 7 155:15-23. Wake2O's efforts resulted in the acquisition by Highland of a significant number of Plan Claims, amounting to just shy of $200 million, RC418; RC360; RC419; RC422; RC423; RC424.

20. Finally, Highland continued misrepresenting to investors that it had a ROFR and never mentioned in its communications that the Committee was the entity actually possessing that right. Mr. Leventon was the principal instrument through which this misrepresentation and omission were communicated, Tr. 55:19-25 ("Q.·Mr. Leventon, have you ever sent an e-mail to an investor telling the investor that Highland Capital has a right of first refusal in the event the investor wants to sell its interest in the fund? A. With respect to the Crusader Fund, I don't recall having done so."); but see RC-276; RC-280; RC434; Tr. 7 74:22-76:23.)[10]

21. Based upon the testimony at the hearing, we have serious doubts about the scope of the advice given, if any. In addition, as now conceded, there were adequate untainted funds under the control of the Crusader Funds to have enabled the Committee to exercise its ROFR as to the Plain Claims, had they been informed in a timely way, as mandated by the Plan. 10/24/18 Highland Ltr. to Panel at 2; RC-408 at 37.

22. Further, from our examination of the language[11] in the TRO, we conclude that the restrained assets were narrowly circumscribed, and the broad position taken by Highland was not well-grounded. The TRO restrained the Crusader Fund only from transferring or disposing of property received, or its cash equivalent, in March 2009 "from Highland Financial Partners, L.P. in connection with the Termination, Settlement and Release Agreement, dated March 20, 2009." JX13; RC134. The TRO did not preclude the Fund's sale of unrestricted assets or use of a significant amount of cash in the Fund. JX13.

23. We also find that Highland's reliance on the UBS TRO was pretextual to support Highland's true goal of benefiting itself over the interests of the Fund and the Committee. We find that Highland breached the Plan and Scheme by its actions and injured the Committee by its breach. We also found that Highland breached its fiduciary duty to the Committee by so acting.

[10] It appears that Mr. Leventon was also involved in a misrepresentation to the Committee about the purchase of a Plan Claim after the TRO had expired. In June 2016, he requested the Committee's approval for the purchase of a Plan Claim by an entity he described as a third party that was not affiliated with Highland. But in the course of soliciting the sale of the Plan Claim, Mr. Leventon represented that Highland was exercising a ROFR on behalf of itself or its affiliates. Tr. 7 87:6-89:11; RC-434. In fact, we find that the third party, Charitable DAF Fund, L.P. ("DAF"), was an affiliate of Highland. RC-435; Tr. 7 82:1384:21. Based on what Mr. Leventon stated, the Committee approved the transfer. RC-316.

[11] "ORDERED, that pending the hearing on this motion, Defendants Highland Crusader Offshore Partners, L.P., and Highland Credit Strategies Master Fund, L.P., are temporarily restrained from transferring or otherwise disposing of property received (or if property has already been transferred or disposed to, the cash equivalent) in March 2009 from Highland Financial Partner,s L.P. in connection with the Termination, Settlement and Release Agreement, dated March 20, 2009."

24. In the calculation of damages owed to the Redeemer Committee by Highland, we have assumed that any Plan or Scheme Claims purchased by Highland would have been purchased at the same discounted price as Highland did. However, the damages methodology used by the Committee's expert witness on damages makes the assumption that the fair market value of each of the Plan Claims was the NAV that Highland had established in each of the relevant months. We do not adopt this methodology because of the uncertainty as to whether a discount should be applied to the NAV in calculating the appropriate fair market value.

25. Rather, we adopt the alternative approach suggested by the Committee, which is rescission. We order Highland to transfer the 28 Plan or Scheme Claims to the Redeemer Committee, to pay to the Committee whatever financial benefits Highland received from the 28 transactions, less what Highland paid for the Plan Claims, plus interest at the rate of 9%, from the date of each purchase. We will leave the hearing open until the parties have worked out the exact financial details to comply with this order.

I. Related Party Transactions

1. The Committee contends that Highland breached its fiduciary duties by engaging in multiple related-party transactions without seeking or gaining the approval of the Committee The Plan provision in questions requires the Committee's approval of "all transactions between the Crusader Funds and any other HCM-Related Party, while it serves as investment manager of the Crusader Funds, including any 'cross trade' between the Crusader Funds and any other account managed or advised by HCMLP," Plan §2.06; Scheme §4.7.1 (emphasis added).

2. First, we must resolve the interpretation question left open by the Order of March 1, 2017, denying Respondent's motion for partial summary adjudication regarding these claims. We found that the language cited above was ambiguous because while Respondent argued that "Crusader Funds" is defined as meaning only four entities, the Master Fund, Onshore Fund, Offshore Fund I and Offshore Fund II, Id., § 1.01, and does not include Crusader Fund "portfolio companies" and other affiliated "entities," Claimant argued that if Crusader Fund meant only those four entities, there would be no meaning to the "including 'cross trades' language of §2.06, because none of the four entities directly owns assets and thus could not engage in cross trades with each other or with any other account managed by Highland. Thus, the language 'including "cross trades" must refer to entities broader than just the defined entities within Crusader Funds, or else that portion of §2.06(a) prohibiting cross trades would be read out of the Plan. Accordingly, we denied without prejudice the motion to dismiss the breach of contract and fiduciary duty claims based on the so-called affiliate transactions until after the record has been more fully developed.

3. At the hearing, testimony was taken from two Redeemer Committee members, Messrs. Montgomery and Behr, regarding the drafting of the section in question. Mr. Montgomery testified that he negotiated the terms of the Plan with Michael Colvin, who was then Highland's General Counsel, telling him that the Committee "needed a related-party transaction prohibition, and he agreed to that. And the understanding was that it included everything on the Highland side and everything on the Crusader side… we thought there was agreement that it was including everything on the Highland side and everything on the Crusader side…" Tr. 2, 234:2-6, 235:2-5. Although in response to a question from a member of the Panel, Mr. Montgomery could not recall the specific language he and Mr. Colvin used to convey this understanding, and on cross-examination, he could not provide a reason for how the specific clause was drafted on this point, we credit Mr. Montgomery's testimony on this point.

4. Although of limited evidentiary significance, Mr. Behr's testimony that before the adoption of the Plan and Scheme he had had discussions with someone at Highland, whom he recalled was Mr. Colvin, about concerns regarding Highland expensing board fees paid to its portfolio companies, Tr. 9 76:17-25, 77:2, supported Mr. Montgomery's testimony, cited above, that the subject of prohibiting certain related party transactions was part of the negotiations over the Plan. His recollection was supported in part by his contemporaneous notes of having raised that subject in the negotiations. HC508 at 142.

5. In addition, the Committee makes the point that the occasional course of conduct between the parties before the relationship between the parties became a matter of some dispute reflected the belief that the Plan and Scheme required that Highland seek the Committee's approval before engaging in transactions that involved entities other than the four specific Crusader Fund entities in the definition. See, e.g., Tr. 4 213:6-9.12 Under the established law relating to contract interpretation, "How the parties perform a contract necessarily is manifested after execution of the contract, but their performance is highly probative of their state of mind at the time the contract was signed." Gulf Ins. Co. v. Transatlantic Reinsurance Co., 886 N.Y.S.2d 133, 143 (First Dept. 2009); "[T]he parties' course of performance under the contract is considered to be the 'most persuasive evidence of the agreed intention of the parties.' … 'Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence.'" Federal Ins. Co. v. Americas Ins. Co., 691 N.Y.S.2d 508, 512 (First Dept. 1999).

6. Based on the foregoing evidence, we resolve the ambiguity in favor of a broad definition of the term "Crusader Funds" to include not only the four specific entities named in §2.06 but also the Crusader Fund "portfolio companies" and other affiliated "entities. The Committee contends that Highland engaged in two types of transactions that required but did not receive its consent: (1) transactions between Highland affiliates and Fund portfolio companies, and (2) transactions directly between Highland affiliates and the Fund entities.

J. Related Party Transactions with Portfolio Companies.

1. The Committee contends that Highland breached §2.06 by causing Fund portfolio companies to pay board fees, advisory fees and D&O insurance premiums.

2. Highland responds that transactions between Highland affiliates and Fund portfolio companies were expressly disclosed to the Fund's investors, see HC-230 at 34-36, and that the investors specifically agreed such transactions were permissible, see HC-118 at 7. Accordingly, Highland urges that there can be no fiduciary duty breaches.

3. Furthermore, Highland urges that the claims arose in 2011 or 2012, and in any case were disclosed to Highland counsel by April 6, 2013, JX-12, and, thus, would be barred by the three-year statute of limitations. Highland characterizes the proof regarding such claims as failing to establish more than the occurrence of "isolated or sporadic acts."

[12] We note that one of Highland's outside counsel also occasionally used the term "Crusader Funds" or "Crusader" when describing transactions between portfolio companies and Highland affiliates, RC83 at 2-3; see JX12; JX10.

4. The Committee claims that the statute of limitations should be tolled under the "continuing violation doctrine," which applies where "separate violations of the same type, or character, are repeated over time," and not where the claims are "based on a single decision that results in lasting negative effects." Moses v. Revlon, 2016 U.S. Dist. LEXIS 106431, *18 (S.D.N.Y. 2016). Under prevailing New York law, "The continuing violations doctrine 'will toll the limitations period to the date of the commission of the last wrongful act where there is a series of continuing wrongs.' Shelton v. Elite Model Mgt., 11 Misc.3d 345, 361 (Sup Ct, New York County 2005); 78/79 York Assoc. v. Rand, 175 Misc.2d 960, 966 (Civ Ct, New York County 1998) … However, 'it will only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct.' Selkirk v. State of New York, 249 A.D.2d 818, 819 (3d Dept 1998)." Pankin v. Perlongo, 2012 WL 7868667, at *2 (Sup. Ct. N.Y. Cnty. 2012).

5. The evidence brought forth by the Committee failed to show that the payments made by Highland for insurance premiums or for advisory fees were parts of a series of continuing wrongs. Rather, there appear to have been a series of discrete payments made in no regular or consistent pattern and in no similar amounts.13 Under the circumstances, we find in favor of Highland on these claims. We do not reach the issue of whether disclosure to investors would bar a claim for breach of fiduciary duty.

K. Related Party Transactions with Highland Affiliates

1. The Committee contends that in 2013 and 2014, without seeking its permission as required under §2.06, Highland sold shares in four CLO assets held by the Master Fund, known as Eastland CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., and Stratford CLO, Ltd. (the "CLOs"), in what it characterizes as "pre-approved" transactions to Highland affiliates, without seeking the Committee's approval, as required by §2.06(a), which, as noted above, prohibits "any 'cross-trades' between the Crusader Funds and any other account managed or advised by HCMLP."

2. The proof at the hearing showed that, with no disclosure to the Committee, Highland sold CLOs to brokers it used for other securities transactions who, within a very short time of purchasing the CLOs, sold some or all of the CLOs to Highland affiliates.14 The Committee urges that such sales were breaches of fiduciary duty as well as breaches of the Plan.

[13] Insurance premiums were paid on behalf of four entities (American Home Patient, Inc., Cornerstone Healthcare, Nex-Tech Aerospace, and Trussway Holdings) in 2011 and 2012; no payment to any of the entities was the same as to any other entity. RC355, Schedule 6.1. As to the portfolio company advisory fees, various fees were paid over varying years between 2011 and 2016 by six different portfolio entities to Barrier or NexBank as advisors; with the exception of two years for one of the entities, each payment of an advisory fee was of a different amount.

[14] As set forth in the Expert Report of Basil Imburgia, RC408, Highland engaged in the following transactions:

- It sold 32,500 shares of Grayson CLO at a settlement amounts of $560 and $570 per share, of which $25,500 were sold to NexPoint, with a reported value of $570 per share, Table 19;
- It sold 32,250 shares of Eastland CLO at settlement amounts of $611.40 and $613.90, of which 25,250 were sold to NexPoint, with a reported value of $730 and $670, Table 20;

3. Highland contends that the sales in question were not cross trades but were rather "market-bearing transactions" between Highland and an independent financial institution, which then sold to a Highland affiliate. But this contention is belied by the fact that the transactions bore all of the hallmarks of pre-arranged trades, designed to avoid obtaining the consent of the Committee. See JX-30 at 3 ("Trading assets between two affiliated accounts through a broker may be considered a Cross Trade…"). Indeed, Mr. Dondero, the Chief Executive Officer, is heard on a tape made by then-Chief Portfolio Manager Joshua Terry, suggesting "run[ning a CLO trade] through some broker," RC-263A. By using a middleman between itself and its affiliate, Highland sought to avoid the description of a "cross trade," but the reality is that the transactions were effectively cross trades and we will treat them as such.

4. That said, however, the substance of the transaction, arguably, benefitted the Committee, because assets of the Fund were liquidated, which was a principal goal of the Plan and Scheme. Yet the problem with these transactions is that Highland had a perfectly clear path to effectuate these trades without any question being raised as to their bona fides – it could have sought the consent of the Committee under §2.06, which consent could not be unreasonably withheld under §2.07, HC-300. We find that Highland's failure to do so constitutes a breach of the Plan.

5. We are left with the question of whether Highland's roundabout trading method caused any damage to the Fund. It appears Highland sold the CLOs to a broker for one value and then the broker turned around and sold the CLOs to the Highland affiliate for a higher value. Thus, the Fund received less than it was entitled to receive had the transaction been done without the middleman, and the damage to the Fund is the difference in the two values. While the Committee's expert Basil Imburgia did not use that methodology to calculate the damages associated with these trades, the information on the price paid to the funds and the price paid to the broker is set forth in the expert report of Highland's expert, Mr. Snow, HC-526 at 41. The Committee contends that the difference is approximately $450,000. The Committee is entitled to judgment for the amount of the difference with interest from the date of the sale from the funds, Since none of the experts did the appropriate calculation, as with other items, we leave it for the parties to confer and agree upon the total amount of damages including 9% interest and we will leave the record open to resolve that amount.

- It sold 31,000 shares of Greenbriar at settlement amounts of $713.60 and $665.00, of which all of the shares were sold to NexPoint at reported values of $730.00 and $670.00, Table 21; and
- It sold 31,500 shares of Stratford at settlement amounts of $661.70 and $660.00, of which 25,500 were sold to NexPoint at reported values of $724.49 and $665.00, Schedule 22.

L. Failure to Settle Credit Suisse Trades/Litigation

1. The Committee contends that Highland committed willful misconduct, thereby breaching its fiduciary duty to the Fund and its investors, both by failing to settle two trades Highland made on behalf of the Fund in September 2008 with Credit Suisse (relating to the purchase from Credit Suisse of syndicated loans in the amount of $23.5/9 for properties known as Goldfield and Westgate) and by failing to settle the litigation initiated by Credit Suisse in July 2013 regarding the same trades. The Committee asserts that, despite clear legal authority requiring that Highland settle the trades and the subsequent litigation, Highland refused to do so because it sought to use its refusal to settle the trades and litigation as leverage against Credit Suisse with respect to other claims not involving the Fund that Highland had against Credit Suisse. Thus, the Committee contends Highland put its own interests ahead of the interests of the Fund. Consequently, the Committee further alleges, that by its delaying the settlement of the trades and then of the litigation, Highland caused the Fund to incur seven-plus years of statutory interest that could have been avoided but which the Fund had to pay in January 2016 when the trades and the litigation were ultimately settled.

2. Highland poses multiple defenses to the Committee contentions. First, Highland argues that the Committee's claim first accrued in 2008 when it allegedly failed to settle the trades and therefore was released by Section 7.01 of the Plan,[15] releasing Highland from all claims, known or unknown, "from the beginning of the world to the Effective Date" of the Plan in August 2011. Second, Highland contends that even if this claim was resurrected after the effective date of the Plan and Scheme, said claim would have arisen in 2011 and was thus barred by the three years statute of limitations for breach of fiduciary duty claims. Third, Highland argues that it did not breach its fiduciary duty as it was only exercising its legitimate business judgment in not settling the trades or the litigation and that the Committee has otherwise failed to show that Highland committed willful misconduct in this regard. Finally, Highland asserts that if the Tribunal finds that it breached its fiduciary duty, any damages that might be owing should be at a reduced amount from what the Committee claims.

[15] Section 7.01 provides, as follows: "Section7.01. Upon the Effective Date, each of the Consenting Redeemers, for themselves and on behalf of any of their respective officers, directors, shareholders, partners, members, employees, affiliates, investors, agents and representatives and any other person or entity entitled to assert a Claim (defined below) by, through, under, or on behalf of any Consenting Redeemer, hereby releases each of the HCM-Related Parties and each of the other Consenting Redeemers, from any and all accounts, actions, agreements, causes of action, claims, contracts, covenants, controversies, damages, debts, demands, executions, expenses, judgments, liabilities, obligations, omissions, promises, representations, and fights to payment, and all other liabilities of every kind, nature and description whatsoever, liquidated and unliquidated, fixed and contingent, matured and unmatured, disputed and undisputed, legal and equitable, state and federal, secured and unsecured, accrued and unaccmed, known and unknown, choate and inchoate (each, a "Claim"), which each Consenting Redeemer has, may have or ever had against any or all of the HCM-Related Parties and the other Consenting Redeemers from the beginning of the world to the Effective Date related to each of the Crusader

Funds, including without limitation its administration and wind-down; provided, however, that such release shall not operate to release any claims arising from this Plan or based on larceny within the meaning of Section 155.05 of the New York Penal Code ("Larceny Claims"), provided that such exception shall not apply to Larceny Claims within the scope of knowledge of the releasing party as of the Effective Date. The benefit of the release in this Section 7.01, as it related to the HCM-Related Parties, is held in trust by the Crusader Funds for the HCM-Related Parties, and the Crusader Funds hereby assign the benefit of the release in this Section 7.01 in their favor."

3. With respect to the issue of the release, the Tribunal concludes that Section 7.01 releases any claims that the Committee might have with respect to the failure by Highland to settle the Credit Suisse trades through the Effective Date of the Plan, but the Committee has not released any claims that arose after the Effective Date of the Plan. The Tribunal need not decide whether the continuous post-August 2011 failure to settle the trades automatically gives rise to new post-Effective Date claims; once Credit Suisse commenced litigation in July 2013 and the Committee renewed its demand that Highland settle the trades and the litigation, and once Highland again failed to do so, a new claim arose, at least as of that point in time. This new claim would not be released under Section 7.01 since it arose after the Effective Date of the Plan. Accordingly, Tribunal views Highland's continuous failure to settle the trades and litigation after July 2013 (until January 2016, and subject to the temporary withdrawal by the Committee of its demand that Highland settle the trades and litigation in September of 2013, as discussed below) as the potentially actionable conduct that the Tribunal will analyze below.

4. As to the statute of limitations issue, the Tribunal agrees with Highland that a three years statute of limitations applies to breach of fiduciary duty claims and therefore any conduct outside the three years limitations period is not actionable. The Committee filed in this Arbitration its breach of fiduciary claim with respect to the unsettled Credit Suisse trades and litigation on July 5, 2016. Consequently, given the application of the statute of limitations, any claim for relief for any period prior to July 5, 2013 is barred by the statute of limitations and the Tribunal will not consider conduct prior to this date to be actionable nor will it consider any claim for damages for the period prior to July 5, 2013.

5. The Tribunal finds that Highland committed willful misconduct, thereby breaching its fiduciary duty to the Fund and its investors, by failing to settle the two subject trades with Credit Suisse. The Tribunal finds that, whatever strategy Highland intended or whatever judgment calls it made, or purported to make, with respect to the settlement of these trades, it was under a clear legal obligation to settle the trades but failed to do so.

6. Highland's then General Counsel admitted to at least a general awareness of the legal obligation under the LSTA regime to settle trades promptly (and to litigate later if there is a dispute regarding same). Tr. 10 288:2-12, 290:13-22, 291:15-20; and there is other evidence to the same effect. See, e.g., JX-12 at RC00100770-771. Despite this clear legal obligation, and despite Committee requests that it do so, Highland refused to settle the trades in order to provide itself with leverage vis-a-vis Credit Suisse on another dispute. Even if, as argued by Highland, its prevailing on this other dispute would advantage the Fund, once the Committee demanded that Highland settle the trades, as it first did during the limitations period on August 7, 2013, Highland should have done so given both the acknowledged weakness in its defenses and that its purported goal in not doing so at least primarily advantaged itself and not the Fund (even if the Fund might have gained some marginal potential advantage if Highland prevailed in the other dispute). In light of the preceding, Highland's refusal to settle the trades constitutes willful misconduct, thereby breaching its fiduciary duty to the Fund and its investors.

7. The Tribunal finds that the actionable willful misconduct by Highland for which damages will be due occurred during the period September 8, 2014 through January 14, 2016. The reason for the end date is clear and undisputed: on that date, Highland caused the Fund to pay for the trades and the interest due. As for the start date, the earliest possible start date, in light of the above analysis, is August 7, 2013 which is when the Committee first demanded during the limitations period that the trades be settled. But, in September 2013, counsel for the parties interacted and the Committee withdrew its demand that Highland settle the trades. HC-476a. The Committee argues that it was not apprised by Highland of relevant information at the time, and therefore the Fund should not be bound by its agent's withdrawal of the demand, but the Tribunal concludes that, notwithstanding Highland's failure to provide this information, the Committee's counsel independently analyzed the relevant issues and the Committee is responsible for the decisions flowing from that analysis. On or around September 8, 2014, after the trial court entered summary judgment in favor of Credit Suisse in the litigation, the Committee reinstated its demand that Highland settle the trades; since Highland did not do so until January 14, 2016, it is, under our analysis above, responsible for damages accruing during the period from September 8, 2014 through January 14, 2016.

8. The Tribunal adopts the damages theory advanced by the Committee: the pre-judgment interest that the Fund had to pay during September 8, 2014 through January 14, 2016, minus the gain it achieved during the same period by virtue of having the use of the subject $23.5 million. However, neither party presented a damages analysis consistent with the preceding parameter. Accordingly, the Tribunal directs that the Parties jointly confer to calculate an amount of damages that takes into account the following parameters: (i) the damages period is between September 8, 2014 and January 14 , 2016; (ii) the 9% statutory interest (ordered by the New York State Supreme Court in September 2014) is to be applied on a simple basis to the total principal amount due ($23.5 million); (iii) the amount of the "off-set" is to be calculated using the factor utilized by Claimant's expert – the Treasury Yield Rates for the damages periods specified in (i); and (iv) 9% statutory, pre-judgment interest is to be applied on a simple basis to the result of the calculations in (i) – (iii) from January 14, 2016 to the date of this Partial Final Award.

M. The Delay in Settling the UBS Litigation

1. As noted above, Highland, Crusader and Credit Strategies were parties to an action commenced by UBS which alleged that certain securities had been fraudulently transferred by Highland to the funds. As a result, the funds were enjoined from transferring the subject assets during the course of the litigation.

2. In May 2015, UBS, Highland, Crusader and Credit Strategies reached an agreement in principle to settle the litigation. Under the terms of that agreement Crusader was to pay UBS $25 million and Highland was to pay $35.75 million. A separate agreement between the Committee and Highland provided that, no sooner than December 30, 2016, Highland could recapture $33.75 million through incentive fees that could be generated through the liquidation of Crusader assets. RC-227.

3. The settlement agreement was to be finalized on May 30, 2015, but Highland refused to go through with the settlement because Credit Strategies would not release claims against Highland. Tr. 3 21:10-22:3; Tr. 3 24:16-25:6; Tr. 10 316:20-317:23. Ultimately the Committee negotiated a its own settlement, pursuant to which Crusader paid UBS $25 million on July 1, 2015, and an additional amount of $30 million on December 29, 2015.

4. The Committee argues that, had Highland not blown up the original settlement, it would not have had to pay the $30 million to UBS on December 29, 2015, and it would have retained those funds at least until December 30, 2016, when that amount might have been transferred to Highland if it had earned that amount in incentive fees. The Committee, therefore, seeks as damages 9% interest on the $30 million from December 29, 2015 to December 30, 2016, which its expert calculated to be $2,041,664.

5. Highland denies that it has any liability and asserts that is protected by the business judgment rule. It also argues that 9% interest is not appropriate. Further, Highland urges that the Committee's expert did not otherwise account for the fact that Highland might have earned $33.75 million in incentive compensation and, therefore, there was a net benefit to the fund.

6. There is no basis for Highland's claim that its conduct is protected by the business judgment rule. In deciding whether or not to settle the UBS litigation, Highland was acting as a fiduciary with respect to Crusader and had a fiduciary duty not to place its own interests above that of Crusader. As the New York Court of Appeals stated in Birnbaum v. Birnbaum, 73 N.Y. 461, 466 (1989):"It is elemental that a fiduciary owes a duty of undivided and undiluted loyalty to those whose interest the fiduciary is to protect . . . . This is a sensitive and ' inflexible' rule of fidelity, barring not only blatant self-dealing, but also requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty. (Citations omitted.)"

7. Thus, Highland was not free to place its own interests above that of Crusader and had an obligation to settle UBS's claims against Crusader regardless of its concerns about possible claims against it by Credit Strategies.

8. There can be no question that Highland's action in refusing to settle with UBS resulted in Crusader being deprived the use of $30 million in cash between July 1, 2015 and December 30, 2016, the first day on which Highland would have been entitled to receive any of the incentive fees. Here, as with the Deferred Fees, it is appropriate to award interest on that amount at the rate of 9% to compensate Crusader for that loss.

9. The problem with Highland's claim that it might have earned an incentive fees of $33.75 million is that Highland offered no evidence that would suggest that its incentives fees would ever have reached even the $30 million amount that the Committee is willing to concede might have been reached. Since the original settlement agreement was negotiated at a time when there was no plan in place to terminate Highland as the fund manager, the incentive fee structure was based on events that would ultimately occur in periods after the Committee terminated Highland. Since neither party made any effort at the hearing to calculate incentive fees, it seems apparent that such a calculation was not possible. In these circumstances, the Committee's assumption that Highland would have earned $30 million in incentive fees by December 29, 2016 is generous and there is no basis for a finding that Highland would have earned more than that in incentive fees.

10. We award Claimant as damages 9% interest on the $30 million from December 29, 2015 to December 30, 2016, which its expert calculated to be $2,041,664.

N. Cornerstone

1. Highland Cornerstone Healthcare Group ("Cornerstone") is a company that owns Long Term Acute Care (LTAC) hospitals in which the Fund owns a minority equity interest. At the time of the adoption of the Plan and Scheme, Highland owned or controlled 100% of the shares of Cornerstone. Two groups of funds, Crusader Funds and Highland Credit Strategies Fund ("Credit Strat"), owned more than 50% of the shares of Cornerstone. Between 2011 and 2013, Highland was secretly engaged in the process of valuing and, eventually, selling the interest held by Credit Strat in Cornerstone. In September 2013, after a process in which the Credit Strat Redeemer Committee was kept completely in the dark as to the sales process that was underway, and which was later found to be unfair to the investors in Credit Strat, see RC-306, Highland arranged for the purchase of Credit Strat's interest by Cornerstone itself at the price of $2,956.03 per share, see JX-16. This price was below the most recent mark set by Highland, and below the value of between $3,424 and $4,434 per share that Highland's investment bankers, Houlihan Lokey, found to be fair for the purchase of the minority interest, see HC-431.

2. Following the purchase of the Credit Strat interest, the Crusader Funds owned 41.8% of Cornerstone, see RC-138 at 7. The Crusader Funds learned of the sale and made known their interest to Highland in having their interest in Cornerstone sold. But when Highland offered to buy their interest for the same price of $2,956.03 per share as the Credit Strat interest, the Committee engaged Ernst & Young ("E&Y") as its advisor to analyze the offer and prepare a response. E&Y prepared two analyses of the value of the Cornerstone asset. The first, HC-577, found that, as of the fall of 2013, "Cornerstone's offer to purchase Crusader's share for $43.8 mm is below Crusader's current carrying value and at the low end of the range of values developed in this Report" and that "based on information provided and reviewed to date it would appear that the lower end of the range is more reasonable to expect that (sic) the higher end of the range," Id. at 5.

3. The Committee then requested that E&Y prepare a supplemental report, and, in January 2014, E&Y rendered a second report, finding that Cornerstone underperformed expectations for 2013 and that the changes occurring in the healthcare field were creating uncertainty in the industry in which Cornerstone operated. HC-577 at 19. E&Y reduced its range to $44 million to $63 million, by imposing a discount from its prior range as of year-end 2013 by 10% to 25%. In discussions with counsel to the Committee, E&Y suggested countering with a purchase price in the range of $50 million to $54 million "for negotiation purposes." Id.

4. Thereafter, on March 28, 2014, after the Committee had considered its options, it made a counter-offer within the range suggested by E&Y at $52,342,188, or $3,529 per share, plus a 50% recapture provision in the event of a sale within three years. JX-18. The counter-offer was at the 2013 year-end market value, as calculated by Highland. Id. Highland never responded to this counter-offer despite repeated overtures to Highland by the Committee, and despite the desire of the Claimant Redeemer Committee and the mandate of the Scheme and Plan to liquidate all of the assets of the Crusader Fund, the interest in Cornerstone held by the Crusader Funds has not been sold.

5. Claimant contends that the failure of Highland, during the period it was the investment manager of the Funds, to make any good faith effort to sell the Funds' shares in Cornerstone, constituted a breach of fiduciary duty.

6. As part of its claim of breach of fiduciary duty, the Committee urges that Highland is collaterally estopped from denying the findings of the arbitration tribunal in the arbitration brought by the Redeemer Committee of Credit Strat arbitration tribunal regarding, inter alia, the Cornerstone transaction. RC-306 (4/6/16 Credit Strategies Fund Final Award).

7. In particular, as it bears on this dispute, the Committee contends that Highland is estopped from denying the following findings: (1) Highland controlled Cornerstone; (2) the per share price at which Highland sold Credit Strat's interest was unfair; and (3) a price of $3,929 per share was a fair price, based upon the Houlihan Lokey valuation.

8. Highland contends that the Credit Strat Tribunal's findings do not bind Highland in this proceeding, because the two arbitration proceedings deal with "fundamentally different" issues, such that collateral estoppel does not apply.

9. First, Highland urges that the Credit Strat Tribunal was dealing with the ramifications of a consummated sale, where it found that Highland controlled both Cornerstone's offer and Credit Strat's acceptance. HC-220 at 8, 30, whereas in this proceeding, the evidence is that Cornerstone made an offer to the Committee, but Highland had no role in the Crusader Fund's evaluation of or counter to that offer and no sale occurred.

10. Secondly, Highland points out that in Credit Strat, the retention of Houlihan Lokey and the entire process that Houlihan Lokey engaged in was a secret that the Credit Strat Committee was unaware of, whereas, in this proceeding, the Houlihan report as well as other financial information was made available to the Crusader Committee, HC-577 at 577.0002, Tr. Day 5 at 114:12-117:18 (Zambie).

11. The doctrine of collateral estoppel requires that an issue being litigated in the second case be the same as was fully litigated by the same party in the first action. Fuchsberg & Fuchsberg v. Galizia, 300 F.3d 105, 109 (2d Cir. 2002) ("[C]ollateral estoppel prevents a party from relitigating an issue decided against that party in a prior adjudication. It may be invoked to preclude a party from raising an issue (1) identical to an issue already decided (2) in a previous proceeding in which that party had a full and fair opportunity to litigate.") (internal quotations and citations omitted).

12. Although there are differences in the way in which the sale process took place, we do not find that such differences obscure the fact that some issues are substantially identical in both proceedings.

13. The principal finding that we think is binding on Highland in this proceeding is that the price of $3,929 per share, based upon Houlihan Lokey's valuation, was a fair price. Claimant also argues that Respondent is bound by the finding that the offering price Highland made for the Credit Strat position, which was the same price as offered to the Redeemers Committee here, was unfair. But we think that finding would fly in the face of Claimant's own adviser, E&Y, who found that such a price was at the low end of a fair range. Accordingly, we do not think it appropriate to adopt such a finding as binding in this proceeding.

14. Highland also contends that, with respect to the possible sale of the Cornerstone interest, it was not in a fiduciary relationship with the Committee, which was relying on EY for negotiating assistance, not on Highland, as Highland was sitting opposite to the Committee in the negotiation. Tr. Day 5 at 116:10-117:18 (Zambie).

15. While the Committee was not relying on Highland for financial advice or guidance with respect to Cornerstone in the period between the Fall of 2013, when an offer of $2,956.03 per share was made, and the early Spring of 2014, when the counter-proposal were made, the Committee did rely on Highland, in its role as investment manager, both before and after those dates, to liquidate the Fund as rapidly as possible.

16. But by Highland's choosing to have the Crusader Funds, along with several other entities controlled by Highland, invest in Cornerstone, Highland voluntarily placed itself in a conflict position: it owed fiduciary obligations to the Crusader Funds to maximize the liquidation process, while being the control person of Cornerstone whose own interests were to have any purchase price be as low as possible. As investment manager, Highland was obligated to be fully responsible to the Committee, but could not do so as long as it also continued to play an active role as controlling party of Cornerstone with respect to the Committee's desire to sell.

17. The hearing record is that, other than making the offer in September 2013, Highland took no steps to market or sell the Fund's interest in Cornerstone. Tr. 1 347:16-349:2; 364:12-22. At meetings held with representatives of the Committee, the Committee asked about plans to sell assets and Highland never discussed, or appeared to have a plan by which it proposed to sell the Cornerstone asset. Tr. 1 349:4-22; 365:13-17; Tr. 4 55:14-20; RC-317 at 2("Mr. Jameson noted that for the remainder of the portfolio, formal strategies for disposition are not in place."). When Committee representatives met periodically with Jim Dondero, the CEO, he made it clear that he ran the sales operation completely and did not wish to be questioned or have the portfolio managers questioned as to the timing of any particular sale.

18. We find that Highland had a fiduciary duty not to place its own interests above that of Crusader, Birnbaum v. Birnbaum, 73 N.Y. at 466 (1989), but rather to subordinate its own economic interests behind its fiduciary obligation to the Crusader Funds. Guth v. Loft, 5 A.2d 503, 510 (Del. 1939) ("The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interest."); Weinberger v. UOP, Inc., 457 A.2d 701, 710 (Del.1983) ("There is no dilution of [fiduciary] obligation where one holds dual or multiple directorships."); see also Carsanaro v. Bloodhound Technologies, Inc., 65 A.3d 618 (Del. 2013). Highland's failure to subordinate its own interests to those of the Committee led directly to its failure to engage in a fair negotiating process with the Committee. By failing to do so, Highland breached its fiduciary duty to the Fund. Caruso v. Metex Corp., 1992 WL 237299, at *16 (E.D.N.Y. July 30, 1992), People ex rel. Spitzer v. Grasso, 50 A.D.3d 535, 546 (1st Dep't 2008). That breach of fiduciary duty was a continuing offense through the period of time that Highland was the investment manager of the Crusader Fund, as Highland never itself took, or authorized Cornerstone to take, any action in response to the counter-offer that was made in February 2014.

19. Highland argues that the Committee must overcome the business judgment rule that "the defendant [fiduciaries] have acted on an informed basis and in the honest belief they acted in the best interest of the [client]," citing CVC Claims Litig. LLC v. Citicorp Venture Capital Ltd., No. 03 CIV. 7936 (DAB), 2007 WL 2915181, at *4 (S.D.N.Y. Oct. 4, 2007), in turn citing Aronson v. Lewis, 473 A.2d 805, 812 (Del.1984)("While each director must meet this obligation, a decision made by the board of directors will be presumed, under the business judgment rule, to have been made 'on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the company,' unless the plaintiff shows that the presumption does not apply.").

20. But here, we find that Highland's decisions regarding the purchase of the Cornerstone shares from the Crusader Funds — from the offer to purchase, the ignoring of the counteroffer, and the failure to engage in or authorize a negotiation process — were made with the willful intent to benefit itself and not the Crusader Funds investors. See JX-19; Tr. 1 379:17-380:8. The Business Judgment Rule does not protect Highland or its officers from scrutiny for alleged breaches of fiduciary duty under these circumstances.

21. The question then is what is the appropriate price at which the sale should take place. "[I]n determining whether a fiduciary has acted prudently, a court may examine a fiduciary's conduct throughout the entire period during which the investment at issue was held. The court may then determine, within that period, the 'reasonable time' within which divesture of the imprudently held investment should have occurred. What constitutes a reasonable time will vary from case to case and is not fixed or arbitrary. The test remains 'the diligence and prudence of prudent and intelligent [persons] in the management of their own affairs' (id., at 511 [citations omitted])." Matter of Estate of Janes, 90 N.Y.2d 4, 54 (1997); Public Service Co. of Colorado v. Chase Manhattan Bank, N.A., 577 F.Supp. 92, 107 (S.D.N.Y.1983) (Lumbard, CJ, sitting by designation)("where there is no sale, it is impossible to fix exactly the moment by which the loan should have been sold or the amount that could have been obtained; "[p]robably the only rule is that the court will use its common sense and determine what under all the circumstances it is fair to say that the trustee ought to have received if he had done his duty in selling the property within a reasonable time," (quoting Scott on Trusts)).

22. To satisfy its obligation under the Plan to liquidate the Fund's assets as rapidly and as fairly as possible, Highland did not have "to cause Cornerstone to purchase the Fund's Cornerstone shares for a specific price and at the specific time demanded by the Committee…," Highland Post-Hearing Brief at 11, but it did have a duty to place the Funds' interest above its own and to obtain the best price possible for the Funds' Cornerstone interest. Thus, when it decided it wished to make an offer to purchase the Funds' Cornerstone shares, it was obligated to do so at the fair market value and not to attempt to take advantage of the fact that it had placed the funds in a position where it was the only available buyer.

23. Highland argues that it makes no sense to assess damages based upon a hypothetical sale of the Cornerstone asset, because, first, since the shares have never been sold, there is no realized loss; and, second, "other than Cornerstone's $43.8 million offer, there is no evidence of any other willing buyer for Cornerstone's assets at any price."

24. We reject the first argument because it ignores what we have found to be the breach of fiduciary duty —the obligation to pursue and consummate a sale at a fair and reasonable price. The Fund was damaged by reason of Highland's failure to fulfill that obligation.

25. As to the second argument, Highland defeats its own argument by pointing out that, in the real world, there is only Cornerstone available as a buyer. But, because of Highland's own financial objectives, there has been no indication since April 2014 when it failed to authorize a counteroffer that Highland was interested in directing Cornerstone, which it controlled, to make an offer to purchase the shares at anything other than a bargain basement and unfair price.

26. Using our equitable powers, we believe that a fair price can be derived by using the fair market value of the shares of $3,929 per share, based upon Houlihan's valuation prepared on July 15, 2013, adjusted downward by 10-25% by the year-end discount caused by several factors cited by E&Y. The average of that discount results in a fair market valuation of $3,241.43, which amount is what we find should have been offered to pay for the Cornerstone shares.

27. We order that Highland pay to the Committee $3,241.43 per share, or $48,070,407, and order that the Committee simultaneously cause the Crusader Fund to surrender its interest in Cornerstone to Highland.

28. With respect to an award of pre-judgment interest, "[a]lthough an action for breach of fiduciary duty is generally considered of an equitable nature, '[e]ven on [such] a claim with equitable underpinnings ... prejudgment interest [is] mandatory where the only relief sought was compensatory damages.' Lewis v. S.L. & E., Inc. 831 F.2d 37, 39 (2d Cir.1987) (citing Spector v. Mermelstein, 485 F.2d 474, 481 (2d Cir.1973))(emphasis added).

29. Regarding the rate of pre-judgment interest to be applied, Claimant argues for the application of New York's statutory rate of interest of 9% as most appropriate. Under CPLR §5001(a), "in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion." See 212 Inv. Corp. v. Kaplan, 16 Misc. 3d 1125(A), at *9 (Sup. Ct. N.Y. Cnty. 2007); Panix Prods., Ltd v. Lewis, id; Summa Corp. v. Trans World Airlines, 540 A.2d 403, 409 (Del. 1988).

30. Under CPLR §5004, New York applies pre-judgment interest at 9%, simple annual interest. Under the circumstances here, where the breach of fiduciary duty deprived the investors of the Crusader Funds of a significant distribution and partial return of their equity, we exercise our "broad discretion, subject to principles of fairness, in fixing the rate to be applied," Summa Corp. v. Trans World Airlines, Inc., id., and we award interest at the statutory rate of 9%, simple annual interest, pursuant to New York law, from April 15, 2014, through the date of this Partial Final Award. We pick this date as it is the date by which we believe Highland and/or Cornerstone (as controlled by Highland) should have responded to the Committee offer.

IV. The Return of the Deferred Fees

A. Under §§2.02 and 6.02 of the Plan, if Highland distributed $1.7 billion within 43 months of the Plan's Effective Date, Highland could obtain $10 million in Deferred Fees that had been placed in the special account at the outset to incentivize Highland's rapid liquidation. There is no question that Highland did not meet that goal by the 43rd month and, thus, in Count Three of its Amended Demand, the Committee seeks the immediate return to the Fund of those proceeds by a declaration that the Fund should distribute the right to receive payment in respect of the funds in the Deferred Fee Account to the Consenting Compulsory Redeemers.

B. Highland objects on the ground that the UBS TRO eliminated the 47-month schedule applicable to the Deferred Fee Account, invoking the Impossibility Doctrine, discussed in detail above, and argues that, upon the eventual complete liquidation of the Fund, it will be entitled to the $10 million in the Deferred Fee Account.

C. For reasons set forth earlier, we reject the argument that, under the Impossibility Doctrine, Highland was relieved of the requirement that it achieve complete liquidation of the Fund within 43 months, and, thus, is entitled to the $10 million in Deferred Fees upon complete liquidation. Highland had the opportunity to achieve the complete liquidation despite the duration of the UBS TRO, but chose, for its own reasons, not to do so. The Impossibility Doctrine does not provide a basis for granting Highland affirmative relief.

D. We order the return to the Crusader Fund the $10 million in the Deferred Fee Account.

V. Counterclaims

A. Respondent has brought two principal counterclaims: first, it seeks to recover the remainder of Deferred Fees to which it says it is entitled now because Claimant should have completed the complete liquidation of the Fund's assets by December 31, 2017, at the latest; and, second, it seeks damages against the Committee for breach of the Plan and of its fiduciary duties to Highland by failing to oversee A&M's liquidation of Fund assets and for approving, without adequate, if any, scrutiny, A&M's fees, said to be exorbitant.

B. As to the breach of fiduciary duty claim, the fiduciary duty relation is said to arise from Highland's status as an investor in the Crusader Funds. Highland's Post-Hearing Brief at at 3-5. However, we have previously stricken those portions of Highland's Amended Counterclaim that alleged it was suing as an investor. Panel Order, April 1, 2018, at 4. Furthermore, even assuming that, as an investor, Highland had standing to bring a claim for breach of fiduciary duty, as stated below, we find that no breach of duty has been proved with respect to any of the allegations in Respondent's Amended Counterclaim.

C. Specifically, we have examined the record thoroughly and, aside from the testimony of Highland's expert, James Finkel, and its former portfolio manager, Mr. Jameson, there is insufficient evidence of a purposeful and wrongful delay in liquidation or a failure by the Committee to oversee and scrutinize A&M's performance, nor any activity of A&M that the Committee aided and abetted that was proved wrongful.

D. Mr. Finkel had a distinguished thirty-plus year career in capital markets, investment banking, and investment advisory work, including as a liquidator of the assets of alternative investment funds. But his opinion that Highland or any reasonable manager or liquidator would have completed liquidation by the end of 2017, at the latest, was not based on anything more than his unverified judgment, and not on a close examination of the facts in this record. For example, he conceded that, in reaching his opinions, he didn't consider the amount of information A&M provided to investors, didn't review A&M's time records or evaluate the quality of the work performed by A&M, and didn't consider the consequences of the lack of cooperation of Highland with A&M, among other critical deficiencies. Tr.10 367:10-372:3. Similarly, his opinion that, because of what he regarded as a flawed compensation structure, A&M's primary focus was on the time it spent on projects, rather than on results achieved, was based on one assumption that time-based work is, inevitably, less likely to be focused, an assumption that we reject as a sound basis of criticism of A&M's contribution. We find that Mr. Finkel' s opinions were not soundly based and we reject them.

E. Mr. Jameson worked for Highland for almost seven years as co-head of Private Equity, responsible for sourcing and executing private equity investments and monetizing existing portfolio companies. He testified that he was aware of the UBS TRO and had been advised that he could not sell assets during its pendency. He was aware that Cornerstone did not comply with requests by A&M for information but did not think he had the power to direct Cornerstone to do so Tr 10 28:18-30:3. He also testified that, had Highland remained as its investment manager, it would have sold the Cornerstone asset by December 31, 2017, and that Highland Capital's purchase of Cornerstone from the Crusader Fund at a negotiated price around the mark set by Highland would have been logical. Tr. 10 30:4-35:23. He also testified, in response to questioning by the Tribunal, that little, if anything, would have changed in Highland's ability to negotiate a sale with the Committee when it was replaced by A&M as its investment manager, Tr. 10 119:8-121:23. On balance, despite Mr. Jameson's on-the-ground role as portfolio manager, his testimony did not support the allegations of Highland in its counterclaims; if anything, his intimate understanding of the Cornerstone asset and how Highland controlled the process by which Cornerstone was or wasn't being marketed supported the Committee's contentions that Highland could have negotiated a fair disposition of the Cornerstone asset had it chosen to do so.

F. As to an alleged delay in the liquidation of the Fund's assets, the weight of the credible evidence is that Highland, not A&M, was responsible for any delay in liquidating the balance of the assets in the Crusader Fund after Highland was discharged and A&M was retained.

1. We note that we have previously found that Highland, after refusing to respond to numerous requests by the Committee for books and records, should make a thorough search of its books and records and produce all non-privileged documents in its possession, custody, or control on certain relevant topics. Thus, we rejected several arguments put up by Highland to prevent the Committee and A&M from gaining access to critical books and records. Order and Partial Award, April 21, 2017.

2. But, even when ordered to do so, Highland again refused to produce documents on at least two other occasions, requiring additional motions addressed to this Tribunal, Order, June 20, 2017; Order, October 21, 2017.

3. In addition, there was unrebutted testimony that Highland produced "hundreds of thousands" of documents in single-page PDF format, requiring the better part of three or more months of A&M's time to correlate and organize. Tr. 6 25:4-19.

4. By contrast, other than Mr. Finkel's testimony, there was little or no evidence of A&M's procrastinating or proceeding with deliberate slowness or that the Committee failed in its oversight of A&M.

5. We have considered all of the other factual and legal arguments made by Highland in support of its counterclaims and conclude that Highland is not entitled to recover the remaining Deferred Fees being held in the Fund's cash account and that the Committee did not breach Sections 2.02 of the Plan and 1.5.2 of the Scheme, the covenant of good faith and fair dealing, or its fiduciary duties to Highland and other investors. We dismiss Highland's counterclaims in their entirety.

VI. Attorneys' Fees and Other Costs

A. Both parties have requested attorneys' fees relating to all claims asserted in the Amended Demand, Highland's Answer, Highland's Amended Counterclaims, and Claimant's Answer to the Counterclaims. Am. Dem. at 53-54; Highland Answer, October 16, 2016, at 21-22; Highland Am. Counterclaim, April 15, 2018; Committee Answer to Counterclaims. Under AAA Commercial Arbitration Rules, Rule 47(d)(ii), those mutual demands for attorneys' fees submitted the issue to arbitration and gave this Panel the authority to award attorneys' fees, in its discretion. AAA Rule 47(d)(ii). "[M]utual demands for counsel fees in an arbitration proceeding constitute, in effect, an agreement to submit the issue to arbitration, with the resultant award being valid and enforceable." R.F. Lafferty & Co., Inc. v. Winter, 161 A.D.3d 535, 536 (1st Dep't 2018) (internal quotation marks and citations omitted).

B. The Committee urges that an award of attorneys' fees to it is justified by Highland's having "acted in bad faith, vexatiously, wantonly, or for oppressive reasons," InterChem 59 Asia 2000 Pte. Ltd. v. Oceana Petrochem. AG, 373 F. Supp. 2d 340, 355 (S.D.N.Y. 2005) (citation omitted), and that the record shows numerous examples of Highland acting in bad faith.

C. Highland acknowledges the Tribunal's discretion to order an award of attorneys' fees but opposes an imposition of attorneys' fees here. First, Highland argues that denying the Committee's request for attorneys' fees would be consistent with Section 9.02 of the Plan which provides that "each of the Crusader Funds retains obligations it has to pay . . . legal fees." HC-300 at 86. But this section of the Plan does not deal with the issue of fee-shifting being ordered by an arbitral tribunal. Nor, given Rule 47(d)(ii), would an order of this Tribunal shifting the responsibility of fees from one party to another be contrary to the so-called American rule, as both parties have sought this relief which is authorized under the prevailing rules of this Tribunal.

D. Second, Highland urges that the only basis upon which the Committee is seeking an award is that Highland allegedly engaged in bad faith and vexatious conduct, citing only InterChem Asia 2000 Pte. Ltd. v. Oceana Petrochem. AG, 373 F. Supp. 2d 340, 355 (S.D.N.Y. 2005). Highland points out that the Court in InterChem Asia justified an arbitrator's imposition of an award of attorneys' fees because of one party's "bad faith" conduct during the arbitration, principally concerning discovery issues. Here, the Committee cites seven examples of alleged bad faith, but only one dealt with such conduct during the arbitration, "failing to provide the Committee with the books and records of the Fund, resulting in an extensive discovery process, producing records as single-paged TIFs, and resulting in a Panel ruling against them," citing the Tribunal's Panel Opinion and Final Partial Award, dated April 17, 2017.

E. We are exercising our discretion to grant Claimant's request for attorneys' fees and costs and to deny Respondent's request for the same relief. We do not base our award on any concern of bad faith or oppressive conduct by Highland's able trial counsel, who acted professionally throughout these proceedings. However, with respect to each of the claims on which we have determined that the Committee is entitled to prevail, we have noted above the many occasions where, during the time it was investment manager and thereafter, Highland engaged in conduct that breached the Plan, breached fiduciary duties, involved secrecy, misrepresentations, and false statements by the most senior executives, and constituted willful misconduct. Furthermore, large portions of the defense set forth by Highland's witnesses were unworthy of belief and reflect the fact that Highland knew that it had no legitimate defense to many of the Committee's claims. Accordingly, in our discretion, based on the foregoing, we award Claimant its legal fees and costs for the litigation of this arbitration.

VII. CONCLUSION AND AWARD

A. With respect to the claims below for which we find liability and direct the payment of damages and interest, if the Parties are not able to agree on the amount of damages or interest, we direct them to submit simultaneous briefs to the Panel on the issues within thirty (30) days of the date of this Partial Final Award; there will be no reply briefs unless otherwise directed.

B. We find for Claimant, Redeemers Committee of the Highland Crusader Fund, on the breach of contract claims as follows:

1. The taking of the Deferred Fees: We order that, within twenty (20) days of the date of this Partial Final Award, Respondent, Highland Capital Management, pay to the Claimant the Deferred Fees in the amount of $33,313,000, with statutory interest of 9%, calculated on a simple basis, from the dates of taking in January and April 2016 through the date of this Partial Final Award.

2. The payment of Distribution Fees: As found above, with respect to each of the following categories, we find that the Respondent is liable for damages in the amount set forth in the Expert Report of Claimant's damages expert, Basil Imburgia, $14,452,275, plus 9% interest, calculated on a simple basis, from the respective dates such Fees were taken:

a) The Distribution Fees attributable to the payment of Deferred Fees;

b) The Distribution Fee attributable to the amounts reserved in the Redeemer Trust Account;

c) The Distribution Fee attributable to the amounts paid in settlement of the Barclays claims;

d) The Distribution Fee attributable to the value of the LP interests and amounts transferred to Eames;

e) The Distribution Fees attributable to the amount of margin borrowings; and

f) The Distribution Fees attributable to the cumulative nature of the calculation, as discussed above.

C. We find for Claimant, Redeemers Committee of the Highland Crusader Fund, on the breach of fiduciary duty claims as follows:

1. Engaging in related party transactions without Redeemer Committee approval:

2. Purchase of Plan claims without Redeemer Committee approval: Within twenty (20) days of the date of this Partial Final Award, we order Respondent, Highland Capital Management, to transfer the 28 Plan or Scheme Claims to the Redeemer Committee, to pay to the Committee whatever financial benefits Highland received from the 28 transactions, less what Highland paid for the Plan Claims, plus interest at the rate of 9%, from the date of each purchase, calculated on a simple basis;

3. Sale of CLO interests - The Committee is entitled to judgment for the amount of the difference between the sale and repurchase prices with interest from the date of the sale from the funds. We direct the Parties promptly to confer and agree upon the total amount of damages including 9% interest, calculated on a simple basis; if the Parties are not able to agree on the amount of damages, we direct the Parties to submit briefs to the Panel on the issues within thirty (30) days of the date of this Partial Final Award;

4. Failure to settle Credit Suisse claims: We find for Claimant, Redeemers Committee of the Highland Crusader Fund, on this claim and direct the Parties promptly to confer to calculate an amount of damages that takes into account the parameters set forth in the body of this Award; if the Parties are not able to agree on the amount of damages, we direct the Parties to submit briefs to the Panel on the issues within thirty (30) days of the date of this Partial Final Award;

5. The UBS litigation: We find in favor of Claimant, Redeemers Committee of the Highland Crusader Fund, and award damages in the amount of 9% simple interest on $30 million from December 29, 2015 to December 30, 2016, which shall be paid to the Redeemer Committee by Highland Capital Management within twenty (20) days of the date of this Partial Final Award; and

6. The Cornerstone Asset: We find in favor of Claimant and direct Highland Capital Management, within twenty (20) days of the date of this Partial Final Award, to pay the Redeemer Committee the amount of $48,070,407, plus interest at 9%, on simple basis, in return for which the Fund will transfer title to the shares to Highland.

D. We grant Claimant's request for a declaratory judgment, seeking the immediate distribution of the Deferred Fee Account, and order the payment of the $10 million in the Account to the Committee for disbursal to the Consenting Compulsory Redeemers within twenty (20) days of the date of this Partial Final Award.

E. We find against Respondent on its counterclaim and dismiss the counterclaim with prejudice.

F. We grant Claimant's request for reasonable attorneys' fees and costs and deny Respondent's request for an award of attorneys' fees and costs. With respect to the amount of fees and expenses that Claimant seeks, the parties should promptly confer to determine whether they can agree on an amount. If the parties can not agree, Claimant shall file an affidavit or petition setting out its claim with appropriate documentation within fifteen (15) days of the date of this Award, unless counsel agree otherwise. Respondent shall respond within fifteen (15) days thereafter, unless counsel agree otherwise. There will be no reply opportunity absent leave of the Tribunal.

G. We will leave the hearing open until all issues set forth above have been agreed upon by the Parties or decided by the Tribunal.

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Partial Final Award was made in New York, New York, USA.

Date: March 6, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Partial Final Award was made in New York, New York, USA.

Date: March 6, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Partial Final Award was made in New York, New York, USA.

Date: March 6, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

State of NEW YORK)

) SS:

County of NEW YORK)

I, David M. Brodsky, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Partial Final Award.

3/6/19
Date

David M. Brodsky, Chairperson

State of NEW YORK)

) SS:

County of NEW YORK)

On this 6th day of MARCH, 2019, before me personally came and appeared David M. Brodsky, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

MEENA M. GULATI
Notary Public, State of New York
No. 01GU5015872
Qualified in New York County
Commission Expires August 2, 2021

State of FLORIDA)

) SS:

County of LEE)

I, JOHN S. MARTIN, JR.,, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Partial Final Award.

Date March 5, 2019

John S. Martin, Jr.

State of Florida)

) SS:

County of Lee)

On this 5th day of MARCH, 2019, before me personally came and appeared John S. Martin, Jr.,, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

ROBIN A. YEOMANS
MY COMMISSION # GG 121122
EXPIRES: November 3, 2021
Bonded Thru Notary Public Underwriters

Notary Public

State of NEW YORK)

) SS:

County of NEW YORK)

I, Michael D. Young, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Partial Final Award.

3-5-19
Date

Michael D. Young
Michael D. Young

State of NEW YORK)

) SS:

County of NEW YORK)

On this 5 day of MARCH, 2019, before me personally came and appeared Michael D. Young, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Vickie L. Johnston
Notary Public

VICKIE L. JOHNSTON
Notary Public - State of New York
No. 01JO6113098
Qualified in Queens County
My Commission Expires July 19, 20 20

EXHIBIT 8

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

REDEEMER COMMITTEE OF THE
HIGHLAND CRUSADER FUND,

Claimant,

v. Case No. 01-16-0002-6927

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Respondent.

FINAL AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with Section 9.03 of the Joint Plan of Distribution, and the Scheme of Arrangement, both entered into between the above-named parties and adopted in July 2011, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby, AWARD, as follows:

A. On March 6, 2019, we issued a Partial Final Award, finding Respondent Highland Capital Management, L.P. ("Respondent") liable in a number of respects and awarding damages, interest, attorneys' fees, and costs to Claimant Redeemer Committee of the Highland Crusader Fund ("Claimant"), as described, in relevant part, below. We "le[ft] the hearing open until all issues set forth ... have been agreed upon by the Parties or decided by the Tribunal."

B. In response to an email from Claimant, dated March 7, 2019, seeking clarification on an apparent omission from the Partial Final Award, we issued a Disposition of Application for Modification of Award dated March 14, 2019 ("Modification of Award").[1]

C. This Final Award incorporates the Partial Final Award and the Modification of Award (together, the "Partial Award"). We re-adopt all prior findings and conclusions of the Partial Award, except as specifically modified hereinafter.

D. We have before us the following:

[1] The Modification of Award referred to Rule R-46 of the AAA Commercial Arbitration Rules, instead of Rule R-50, as the basis for the modification of a clerical error, relying upon the predecessor version of Rule R-50. The substantive text of old Rule R-46 and present Rule R-50 are the same.

a. Respondent's Memorandum, dated March 17, 2019, requesting that (1) the Panel withdraw its Modification of Award entered on March 16, 2019; (2) cease any further attempts to award additional damages, attorneys' fees, or costs that are not expressly set forth in the Partial Award; and (3) reconfirm that the hearing and all evidence is closed and the Panel is not empowered to take any further action beyond the issuance of its Partial Award ("Respondent's March 17 Memorandum").

b. Claimant's Submission Regarding Fees and Costs, dated March 21, 2019, made pursuant to Rules R-28, R-47, R-53, R-54, and R-55, AAA Commercial Arbitration Rules, seeking an award of $11,865,181.28 in attorneys' fees and costs, including Claimant's attorneys' fees, AAA administrative fees, arbitration expenses, fees incurred by A&M, expert fees, and Panel compensation paid by the Respondent Highland on behalf of the Committee in this arbitration ("Claimant's Fee Submission").

c. Claimant's Application, dated March 25, 2019, made pursuant to Rule 50, AAA Commercial Arbitration Rules, to modify the Partial Award, issued by this Panel on March 6, 2019 (Claimant's March 25 Application").

d. Claimant's and Respondent's Joint Submission on Damages dated April 5, 2019, in which the Parties agreed on the mathematical calculation of the amount of damages and interest contained in the Partial Award and Modification of Award, subject to Highland's objections to the inclusion of any damages awards that were not specified in the Partial Award and subject to objections on two specific issues: (1) whether the Eames residual LP interests would be extinguished; and (2) whether prejudgment interest awarded by the Panel will continue to run after March 6, 2019 until the earlier of the date the amount awarded is paid to the Committee for the benefit of the Fund, or the date on which a Final Judgment is issued on the Award ("Joint Submission").

e. Respondent's Memorandum dated April 5, 2019 opposing the motion to modify the Partial Award; and opposing any award for damages, attorneys' fees, or costs ("Respondent's April 5 Memorandum").

f. Claimant's Memorandum dated April 5, 2019 arguing that (1) the Panel should award further damages in connection with the Barclays claim measured by the Fund's loss of the residual value of the Eames LP interests, either by extinguishing the former Barclays LP interests, or alternatively, by awarding an appropriate amount of damages to compensate the Fund for loss of the value of those interests, which the Committee puts at $11,589,474; and (2) the Panel should award prejudgment interest through the date the Award is paid or final judgment is entered ("Claimant's April 5 Memorandum").

g. On April 10, 2019, Respondent sought leave, which we granted on consent, to file an additional Memorandum on two issues raised by Claimant in its April 5

Memorandum, namely, that Claimant adds a new and improper request that interest after March 6, 2019 be compound, and not simple, interest by applying an additional 9% statutory interest to both (a) the damages awarded and (b) the interest accrued through March 6, 2019; and that Claimant has provided a new and improper damages calculation relating to the extinguishment of the Eames LP interests.

h. Having reopened the record on March 6, 2019, for additional submissions, as described above, we deem the record closed as of April 10, 2019.

E. Issues

a. Fees and costs

1. In the Partial Award, we evaluated the competing claims made by Claimant and Respondent regarding an award of fees, which both sides had sought in their pleadings. As we noted in the Partial Award, ¶VI.A, 52, AAA Commercial Arbitration Rule R-47 (d)(ii) authorizes the Arbitrator to award attorneys' fees if, as here, "all parties have requested such an award . . . " "[M]utual demands for counsel fees in an arbitration proceeding constitute, in effect, an agreement to submit the issue to arbitration, with the resultant award being valid and enforceable." *R.F. Lafferty & Co., Inc. v. Winter*, 161 A.D.3d 535, 536 (1st Dep't 2018) (internal quotation marks and citations omitted); *In re U.S. Offshore, Inc. and Seabulk Offshore Ltd.*, 753 F. Supp. 86, 92 (S.D.N.Y. 1990) ("If both parties sought attorney's fees, . . . then both parties agreed *pro tanto* to submit that issue to arbitration, and the arbitrators had jurisdiction to consider that issue and to award them.")."

2. During closing oral arguments, Respondent did not mention its own request for an award of fees, but "*acknowledge[d] the Tribunal's discretion* to order an award of attorneys' fees…" Indeed, Respondent made oral and written closing arguments that conceded that it was "*not disputing the discretion that the Panel has* [to award fees]." Tr. 13 444:2-3 (emphasis added). In its closing slides, Respondent also urged that "The Panel *should exercise its discretion in applying the American Rule*." Respondent Closing Slides at 261 (emphasis added).

3. Respondent also argued that denying the Claimant's request for attorneys' fees would be consistent with Section 9.02 of the Plan which provides that "each of the Crusader Funds retains obligations it has to pay . . . legal fees." Second, Respondent urged that the only basis upon which Claimant is seeking an award is that Respondent allegedly engaged in bad faith and vexatious conduct.

4. Respondent now chooses to oppose the grant of fees on grounds distinctly different from those set forth above. It belatedly argues an alleged lack of proof and the Panel's being *functus officio* to award fees.

    1. Respondent argues that the Panel "found that the evidence in the record was insufficient to determine many of the Committee's claims for damages, as well as its claims for costs and fees." Resp. April 5 Mem. 14.

    2. But that is incorrect; we did not find any insufficiency; instead, with no objection, we adopted a well-recognized method of dealing with attorneys' fees and costs by deciding entitlement before amount. See *Franco v. Dweck*, 87 N.Y.S.3d 5 (2018) ("Contrary to respondents' contention, the final award did not run afoul of the doctrine of *functus officio*, which precludes an arbitrator from altering in substance a prior award (see *Matter of Wolff & Munier [Diesel Constr. Co.]*, 41 A.D.2d 618, 340 N.Y.S.2d 455 [1st Dept. 1973]). As the partial final award *expressly reserved* the issue of attorneys' fees, it cannot bar a *subsequent* award of those fees (see *Shimon v. Silberman*, 26 Misc.3d 910, 914–915, 891 N.Y.S.2d 891 [Sup. Ct., Kings County 2009])."

5. Accordingly, we reject Respondent's new positions. From at least the time the pre-hearing briefs, witness lists, and list of exhibits were mutually filed, it was clear that whichever side that was going to seek attorneys' fees if it prevailed was reserving on the specific rates and amounts of legal fees, as well as costs and expenses, many of which had not yet been incurred. To do otherwise would be a waste of resources. Not once did Respondent ever raise the question of proof regarding attorneys' fees and costs; by its silence and conduct, Respondent consented to the process regarding proof of attorneys' fees that the Panel was following, see CCA Guide to Best Practices in Commercial Arbitration (3d edition), 246.

6. Second, we explicitly denominated the award of March 6 as a "Partial Final Award," making clear to the Parties that the arbitral proceeding was still ongoing. We also explicitly left the hearing open so that the Parties could meet and confer or make submissions, including providing additional evidence, "until *all issues* set forth ... have been agreed upon by the Parties or decided by the Tribunal." Under these circumstances, the doctrine of *functus officio* does not apply. *Kennecott Utah Copper Corp. V. Becker, 186 F.3d 1261, 1270-71 & n.4* (10th Cir. 1999) (*Functus*

officio provides that, "once an arbitrator has issued a *final* award and thus discharged his or her office, that arbitrator lacks any continuing power to revise the award or issue a new one.")(emphasis added).

i. Accordingly, we turn to an examination of the application for attorneys' fees and costs, sought by Claimant:

a. Claimant seeks the following in fees and costs:
i. Jenner & Block Fees - $9,278,248.99
1. In support of its fee application, Claimant has provided detailed time records, billing records, and a declaration of Andrew Vail, a partner of Jenner & Block, that establishes that records were maintained on a contemporaneous basis, that time billed on duplicative, inefficient, or extraneous to the arbitral proceeding was excluded from the application, and that hourly rates, and a fixed-fee discount, where applicable, were discounted by 15%. Vail Declaration ¶¶13-18. The hourly rates are shown to be comparable to rates charged by other similar firms and consistent with prevailing market rates for attorneys of similar high levels of expertise and experience. We note that Respondent does not object to the amount sought, except on the bases previously discussed. We find the request for legal fees to be reasonable, especially given the complex factual and legal setting, and grant Claimant's application.

ii. FTI Expert Fees - $1,274,853.26; and A&M Arbitration Fees - $655,160.00
1. In support of the FTI fees, Claimant submitted a declaration, with supporting exhibits, of Mr. Vail, who affirmed that the fees reflected "services that were necessary for the Committee to prosecute its claims against [Respondent] and to defend against [Respondent's] counterclaims, and … the amounts charged for such services were reasonable given the necessity of those services." Vail Declaration ¶26.

2. In support of the A&M Arbitration Fees, Claimant has provided the declaration of Steven Varner, a Managing Director of A&M, who affirms that A&M maintained billing records on a contemporaneous basis for its services throughout the course of this arbitration, but did not keep detailed descriptions of its billed time for specific matters within that engagement. He further affirmed that he and another managing director compiled a "conservative estimate of the time that A&M personnel spent on matters that were specifically required in connection with HCMLP's failure to timely provide A&M with books and records relating to the Fund." That work totaled approximately $655,160.00, after discounts were applied to their normal billing rates. Varner Declaration ¶¶6, 7, and 10.

3. Claimant is not seeking recovery for over $140,000 in attorneys' fees and costs for A&M's counsel to pursue information from Cornerstone pursuant to Del. Code Ann. tit. 8 § 220. Varner Declaration ¶8.

4. Respondent principally opposes the fees of FTI and A&M on the grounds that "while the AAA Rules permit the award of certain expenses (e.g. administrative costs and Panel compensation), they are much more restrictive when it comes to witness costs for the parties. In fact, Rule 54 expressly divides expenses into two categories: (i) witness expenses—which are to be borne by the party presenting the witness; and (ii) '[a]ll other expenses'—which may be apportioned by the arbitrator(s)."

5. While acknowledging some dispute among the courts as to whether Rule R-54 permits a prevailing party to recover its expert witness fees, Claimant urges that the weight of authority provides that both consulting and testifying witness fees are recoverable under the AAA's rules, citing *Dealer Comp.*

Servs., Inc. v. Hammonasset Ford Lincoln-Mercury, Inc., 2008 WL 5378065, at *2, *4 (S.D. Tex. Dec. 22, 2008) (confirming final arbitration award that included expert witness fees); *In re Pos'tive Produc, Inc. v Thermal C/M Services, Inc.*, 2011 WL 13220365, at *4 (N.Y. Sup. Ct. Nov. 18, 2011) (confirming award that included "expert fees and costs"); and *Cardno Int'l Pty, Ltd. v. Merino*, 2017 WL 6034172 (S.D. Fla. Oct. 30, 2017).

6. Rule 47(a) gives the Tribunal the power to "grant any remedy or relief that the arbitrator deems *just and equitable* and within the scope of the agreement of the parties…", while Rule 47(c) provides that "In the final award, the arbitrator *shall* assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator *may apportion* such fees, expenses, and compensation among the parties in such amounts *as the arbitrator determines is appropriate*." (Emphasis added.) Parsing these sections in conjunction with R-54 leads us to conclude that we have the power to award the expenses of the arbitration, including expert fees, as we deem just, equitable, and appropriate. *White Springs Agric. Chemicals, Inc. v. Glawson Investments Corp.*, No. 3:07-CV-752-J-25JRK, 2010 WL 11507082, at *4 (M.D. Fla. Sept. 13, 2010) (confirming award where tribunal awarded prevailing party its expert fees), *aff'd*, 660 F.3d 1277 (11th Cir. 2011).

7. Under the complex circumstances presented here, we find that the experts were essential to the prosecution of the Claimant's case and that their services, and consequent fees, were a necessary obligation the Claimant was bound to its members to undertake in its pursuit of the claims against Respondent.

8. We note, specifically with respect to the A&M fees, that a large portion of the fees appear to relate to "time spent organizing the tens of thousands of individual page PDF files that HCMLP provided as books and records instead of complete documents." Varner Declaration ¶7.

9. From our observations at the hearing and our review of the reported rates and fees of FTI and A&M, we conclude that such fees were fair and reasonable and we find that it would be "just and equitable" and "appropriate" relief to award Claimant all of the expert fees it seeks, and we do so.

iii. Respondent does not object to the following categories of fees sought by Claimant:

1. AAA Administrative Costs - $64,750.00;
2. Court Reporter Hr'g Costs - $114,697.77;
3. Court Reporter Dep. Costs - $28,890.04; and
4. AAA Panel Compensation - $448,581.22 (to date).

b. Accordingly, in our discretion, we award Claimant the total sought in fees, costs, and expenses, as detailed and updated in section F. below.

b. Claimant's Motion for Modification of the Partial Final Award

i. On March 25, 2019, Claimant moved, pursuant to AAA Rule 50, to modify the Partial Final Award in several respects.

1. First, with respect to the Partial Final Award regarding the finding of liability of Respondent with respect to the Barclays LP interests, Claimant moved to correct a clerical error that resulted in the omission of a Barclays damages paragraph from the Partial Final Award by modifying that Award to include the paragraph set forth in the Panel's March 14, 2019 Modification of Award.

2. Second, also pursuant to Rule 50, Claimant moved that the Panel modify the award to address other clerical, typographical, and computational errors in the Partial Final Award.

3. AAA Rule 50 provides in relevant part, as follows: "R-50. Modification of Award. Within 20 calendar days after the

transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto."

4. With respect to the Barclays issues, Respondent contends both that Rule 50 does not apply and that the doctrine of *functus officio* divests the Panel of the power to modify the Partial Final Award, as the Panel would be adding an "additional award" that "represents an entirely new award of $34 million in damages not included in the [Partial Final Award] ... constitut[ing] a material revision of the award."(Respondent's April 5 Memorandum at 5).

5. First, we are not adding an "additional award," as it is clear from the structure of the Partial Final Award that a paragraph was missing from the damages portion; all other findings of liability were accompanied by a section delineating the applicable damages except for the finding of a breach of the Plan and Scheme by reason of the transfer of LP interests to Eames. In other words, we found liability in two respects but omitted a paragraph regarding the remedy for Respondent's breach of the Plan and Scheme that we had found with respect to the transfer, without the required Committee approval, of Barclays' fund interests to itself through entities it controlled as part of the settlement. That omission is a classic example of a clerical error.

6. Second, although the effect of the Modification was to add additional damages to the award against the Respondent, the Panel did not "materially revise" the Partial Final Award since liability had already been found.

7. In addition, as previously discussed, the doctrine of *functus officio* "provides that, *while an arbitrator may correct clerical, typographical, or computational errors in a final award, he has no power to revisit the merits of the award after it has issued...*" *Int'l Broth. Of Elec. Workers, Local Union 824 v. Verizon Florida, LLC*, 803 F.3d 1241, 1250 (11th Cir. 2015). However, we did not issue a final award; it was explicitly labeled a Partial Final Award and was explicitly subject to being supplemented by subsequent presentations of damages analyses by both Parties.

8. Finally, there is ample case law for the proposition that the Panel is not divested of power, even when issuing a final award, from correcting clerical, typographical, or computational errors. See *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 472-73 (5th Cir. 2012); *E. Seaboard Const. Co., Inc. v. Gray Const., Inc.*, 553 F.3d 1, 5-6 (1st Cir. 2008).

9. Respondent also argues that the Panel is barred from correcting the Partial Final Award by AAA Rule 45, which provides that "The award shall be made ... no later than 30 calendar days from the date of closing the hearing..." Respondent urges that "the parties agreed that the final award would be made on or before March 7, 2019. Accordingly, any award made after that date is untimely and beyond the scope of the Panel's authority." (Resp. April 5 Mem. at 7). But, once again, this argument ignores the explicit nature of the March 6 Partial Final Award, which "le[ft] the hearing open until all issues set forth above have been agreed upon by the Parties or decided by the Tribunal."

10. Respondent also argues that we are "reopening" the record in violation of AAA Rule 40. That rule provides, in relevant part, as follows: "The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award..."

11. We acknowledge that a communication from the AAA, dated December 12, 2018, stated that the "no additional evidence is to be submitted and that the hearings are declared closed as of December 12, 2018," but this statement was subsequently withdrawn by the previously-quoted language of the Partial Final Award where we explicitly left the record open "until all issues set forth … have been agreed upon by the Parties or decided by the Tribunal."

12. That language is equivalent to the language that "we will reopen the hearing." *Int'l Bhd. of Teamsters Local 959 v. Horizon Lines of Alaska, LLC*, 22 F. Supp. 3d 1005, 1007–08 (D. Alaska 2014) ("Where an arbitrator specifically retains jurisdiction to resolve disputes regarding damages, that indicates that the arbitrator did not intend the award to be Final. Put simply, an arbitration award that postpones the determination of a remedy should not constitute

a final and binding award"); *Golden v. Lim*, 2016 WL 520302, at *3, *9 (E.D. Mich. Feb. 10, 2016)(holding that the arbitrator had the authority under the AAA Rules to reopen the hearing to accept further submissions on attorneys' fees).

13. Second, even if the relief sought required a reopening of the record, Rule 40 authorizes the Panel to do so "upon the application of a party," so long as doing so did not violate "the specific time agreed to by the parties in the arbitration agreement" for the making of the award. No such time period is set forth in the arbitration agreement. Finally, we interpret Rule 40 to be speaking to the instance of reopening the hearing after the final award is made, which is, again, not the situation we are in.

ii. We grant Claimant's application under AAA Rule 50[2] and formally correct the clerical error by re-adopting the additional paragraph, previously included in the Panel's March 16 Modification of Award, as follows:

1. "Insert the following paragraph at page 54, immediately after VII.B.2.f: "3. The transfer of Barclays Fund interests: By transferring, without the required Committee approval, Barclays' fund interests to itself through entities it controlled as part of the settlement, Highland breached the Plan and Scheme. We award the Committee damages measured by the benefits Highland received in excess of the amount it would have been entitled to receive from the Redeemer Trust Account because Barclays claim was settled for less than its value. In Table 11, Version 2, Claimant's damages expert, Basil Imburgia, calculated that such an amount totaled $34,661,749. RC-522. As with other amounts awarded, the Parties are to confer to determine the actual amount of damages including the 9% interest to date."

iii. Claimant also moves under Rule 50 to correct four other clerical errors, set forth below, as to which Respondent does not object. The motion is granted; the clerical errors are set forth below and corrected as noted:

1. The Partial Final Award reference to the amount of Deferred Fees improperly taken from the Fund by Highland as "$33,313,000" (Partial Final Award at 14, 54) is corrected to read "$32,313,000."

[2] We acknowledge Respondent's interesting linguistic analysis of the differences between ICDR Article 33 and AAA Rule 50, see Respondent April 5 Memorandum at 5-6, but we deny the underlying premise that what we are being asked to do is to make an "additional award as to claims, counterclaims, or setoffs presented but omitted from the award." We had found liability as to two claims involving the Barclays LP interests but omitted the damages component of one of the two liability findings. That does not constitute an award as to a claim argued by Claimant but omitted from the partial final award.

2. The Partial Final Award reference to the amount of improper Distribution Fees calculated by Mr. Imburgia as $14,452,275 (Partial Final Award at 24, 54) is corrected to read "$14,457,275."

3. The Partial Final Award reference to the amount of "$23.5/9" and "$23.5 million" (Partial Final Award at 36, 40) is corrected to read "$23,938,568."

4. The Partial Final Award reference to the incentive period as ending on "December 30, 2016" (Partial Final Award at 40, 41, 42, 55) is corrected to read "September 30, 2016."

iv. Eames

1. In the March 6 Partial Final Award, as modified herein, we found Respondent liable for having transferred the Barclays LP interests to an entity which it wholly controlled, Eames [LLC].[3] We awarded damages "measured by the benefits Highland received in excess of the amount it would have been entitled to receive from the Redeemer Trust Account because Barclays claim was settled for less than its value." We estimated — but did not find — that amount by referring to a damages calculation by Claimant's damages expert, Basil Imburgia, who "calculated that such an amount totaled $34,661,749. RC-522." "As with other amounts awarded," we directed "the Parties ... to confer to determine the actual amount of damages including the 9% interest to date."

2. The Parties have conferred and disagree as to the appropriate amount of damages for Respondent's breach of the Plan and Scheme. Claimant asserts that the appropriate amount of damages is $29,609,015, which is lower than the amount estimated by its expert and cited in the Partial Final Award, because "the value of the Barclays interests which [Respondent] now controls through Eames is expressly excluded, as it would be extinguished and that value would be spread amongst the remaining Fund investors." Claimant April 5 Memorandum, 5.

3. Thus, Claimant urges that "the Panel should either (1) award $29,609,015 and order the extinguishment of the Barclays LP interests owned and controlled by Highland, or (2) award $29,609,015 plus the current value of those LP interests, which its

[3] We found, and it is not disputed, that Highland controls Eames through an entity, Hockney, Ltd., that Highland wholly owns, and which, along with Eames, was created solely for the purpose of holding the Barclays LP interests for Highland's financial benefit. JX24; Tr. Day 8 83:21-86:13; Tr. Day 9 144:21-25, 220:18-25.)

damages expert estimates to be $11,589,474. Claimant April 5 Mem. at 10; Imburgia April 5 Declaration, ¶15.

4. Respondent urges that the "March 16 Modification contains specific language awarding the Committee a specific amount of monetary damages." However, as discussed above, that is not what the Panel did. We directed the Parties to confer on the exact amount to be awarded and to come to the Panel if they could not agree.

5. Respondent further argues that nowhere in the March 6 Partial Final Award or the March 16 Modification did the Panel award Claimant equitable relief concerning the Barclays Claim, and that had the Panel wanted to do so, it knew how to do so.

6. Respondent goes on to argue that Eames is not a party to this arbitration, and, therefore, the Panel lacks the authority to issue an award determining Eames' legal rights and obligations." Even if the Panel determines that the remaining equity interest should have been extinguished at the time of the 2012 settlement, "the fact remains that the equity interest was transferred to—and is still held by—Eames." Respondent April 5 Memorandum, 21-22.

7. Finally, in its April 10 submission, Respondent objects to the Claimant's calculation of interest on any award regarding Barclays or the other claims, to wit, Claimant's April 5 Request adds an improper request that interest after March 6, 2019 be compound, and not simple, interest by applying an additional 9% statutory interest to both (a) the damages awarded and (b) the interest accrued through March 6, 2019.

8. We disagree with Respondent's arguments except as relating to the compounding of interest sought by Claimant, which we discuss more fully below. First, when we found that "Highland breached the Plan and Scheme by transferring the LP interests to a wholly-controlled affiliate after the Committee had specifically disapproved of the transfer," we sought a remedy to deprive Respondent of the benefits that it had received illegitimately, or, in other words, to void the Eames transaction and put the parties back into the position they should have been in. Respondent may not benefit in the future by its breach of the Plan and Scheme, and the illegitimate transaction it engaged in, by forfeiting some, but receiving future, benefits through its absolute control of the entity it created, Eames.

9. Second, although Eames is not a party in this proceeding, that is irrelevant to the relief we grant. The operating party throughout all of the machinations that resulted in the transfer of Barclays' LP interests to an entity it created solely for the purpose of holding such interests was, and remains, Respondent. It is completely within its power to unwind the transfer and re-transfer those interests back to the Fund for the benefit of its investors, as we now order.

10. Regarding the appropriate amount upon which to award interest, for reasons set forth below, we reject Claimant's argument that $29,609,015 is the appropriate amount upon which to award interest, as to do so would be to violated well-settled law in New York regarding pre-judgment interest, CPLR §§5003-5004.

11. We award Claimant monetary damages against Respondent in the amount of $21,768,743, plus 9% simple prejudgment interest from the date of the breach until the earlier of either (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

12. We further order that Respondent take all necessary steps to cause the improperly taken Fund LP interests currently owned and controlled by Respondent through Eames, Ltd to be returned to Claimant within sixty (60) days from the date of transmittal of this Final Award to the Parties.

v. Interest

1. In the March 6 Partial Final Award, we awarded damages and interest through the date of that award, but then, as already referred to, directed the Parties to confer regarding all damages and interest issues. Claimant now urges that we award 9% prejudgment interest on the damage amounts awarded until the earlier of: (1) the date on which the amounts due are paid to the Committee for the benefit of the Fund; or (2) the date on which a court of competent jurisdiction enters a final judgment on the Final Award.

2. However, as Respondent points out, Claimant is, in effect, arguing for a compounding of interest upon interest. We agree. The effect of Claimant's interest calculations would violate New York law, as an award of 9% interest post-March 6 on an amount that already includes 9% interest from the breach through March 6, would amount to compound interest after March 6, 2019. "[T]he statutory

scheme [in New York] for awarding …, where applicable, prejudgment interest, does not provide for compound interest." *520 East 81st Street Associates* v. *State of New York*, 19 AD3d 24 (2005).

3. Respondent also contends that the March 6 Partial Final Award contained specific language awarding interest "through the date of this Partial Final Award"— i.e., March 6, 2019, and that awarding interest through any other date would constitute an untimely modification of the Partial Final Award.

4. We disagree with Respondent that changing the termination date of prejudgment interest would constitute an untimely modification. Although the Partial Final Award did use the date of March 6 as a reference point for calculation of interest, that fact is not determinative of this issue. We also explicitly left open calculations of damages and interest until the Parties had fully conferred on the extremely complex financial calculations that had to be made. Among the calculations was a further calculation of interest. It is not an unlawful modification of the Partial Final Award to make, as we do here, a final award on all damages and interest issues based upon a final record.

5. Furthermore, failing to continue the running of interest through payment or entry of a final judgment could well, under the circumstances presented here, result in Fund investors with no compensation for their documented losses during that time, as well as provide an incentive to Respondent to prolong the confirmation process. We have already had occasion to comment on Respondent's tactics of putting forth witnesses who were "unworthy of belief" and an "[il]legitimate defense to many of the Committee's claims." Partial Award ¶VI(E). We will not adopt a result that would allow Respondent to impose more hardships on the Fund Investors.

6. We award Claimant 9% prejudgment simple interest on all sums awarded from the dates of each breach through the earlier of the date paid or the entry of a final judgment.

F. FINAL AWARD

a. We reaffirm the findings of fact, conclusions of law, and findings of liability as set forth in the March 6 Partial Award, and make the following awards with respect to such findings and conclusions:

i. Claimant's Application to modify the Partial Final Award is granted pursuant to the Disposition of Application for Modification dated March 14, 2019.

ii. Claimant's Motion to Correct Errors is granted, on consent; the clerical errors are set forth below and corrected as noted:

1. The Partial Final Award reference to the amount of Deferred Fees improperly taken from the Fund by Highland as "$33,313,000" (Partial Final Award at 14, 54) is corrected to read "$32,313,000."

2. The Partial Final Award reference to the amount of improper Distribution Fees calculated by Mr. Imburgia as $14,452,275 (Partial Final Award at 24, 54) is corrected to read "$14,457,275."

3. The Partial Final Award reference to the amount of "$23.5/9" and "$23.5 million" (Partial Final Award at 36, 40) is corrected to read "$23,938,568."

4. The Partial Final Award reference to the incentive period as ending on "December 30, 2016" (Partial Final Award at 40, 41, 42, 55) is corrected to read "September 30, 2016."

5. In all other respects, the Partial Final Award dated March 6, 2019 and the Disposition of Application for Modification dated March 14, 2019 are reaffirmed and incorporated by reference.

iii. For the Deferred Fee Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the Deferred Fees in the amount of $32,313,000 as directed in the Partial Final Award, plus prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the dates of the breaches and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

iv. For the Distribution Fee Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $14,457,275, plus prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the dates of breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

v. For the Taking of Plan Claims, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21,

2019, the amount of $3,106,414. The Panel further orders that LP interests identified in RC411 be transferred to Claimant for the benefit of the Crusader Fund or that Claimant cause the Fund to extinguish those claims. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to $3,106,414 beginning on March 7, 2019 and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

vi. For the CLO Trades Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $449,375.00. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple, from the dates of the breaches and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

vii. For the Credit Suisse Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $2,735,411. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple on that sum, from the date of the breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

viii. For the UBS Claim, the Panel awards the following relief: the Panel orders Respondent to pay to the Claimant, on or before May 21, 2019, the amount of $2,041,664. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the date of breach until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

ix. For the Cornerstone Claim, the Panel awards the following relief: the Panel orders Respondent to pay to Claimant, on or before May 21, 2019, the amount of $48,070,407 for the sale of the Crusader Fund's shares in Cornerstone. The Panel also awards pre-prejudgment interest at the New York statutory rate of 9% simple on that sum from the date of breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award. When the amount awarded for the Cornerstone claim is paid by Respondent, Claimant shall cause the Crusader Fund to tender its Cornerstone shares to Respondent.

x. For the Barclays Claim, the Panel awards the following relief:

1. The Panel orders Respondent to pay to Claimant, on or before May 21, 2019, the amount of $21,768,743. The Panel also awards prejudgment interest at the New York statutory rate of 9% simple applied to that sum from the date of the breach and continuing until the earlier of: (1) the date the amount awarded is paid to Claimant for the benefit of the Fund, or (2) the date on which a court of competent jurisdiction enters a final judgment upon this Award.

2. Further to the Barclays Claim, the Panel orders that Respondent take all necessary steps to cause the improperly taken Fund LP interests currently owned and controlled by Respondent through Eames, Ltd to be transferred to Claimant for the benefit of the Crusader Fund within sixty (60) days from the date of transmittal of this Final Award to the Parties, or, alternatively, that Claimant cause the Fund to extinguish those interests.

xi. For Claimant's Application for Legal Fees, Costs, and Expenses, we award Claimant $11,351,850.06 in fees, costs, and expenses as per the following:

1. Jenner & Block Fees - $9,278,248.99;
2. FTI Expert Fees - $1,274,853.26;
3. A&M Arbitration Fees - $655,160.00;
4. Court Reporter Hr'g Costs - $114,697.77;
5. Court Reporter Dep. Costs - $28,890.04

xii. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US$94,693.88 and the compensation and expenses of the Tribunal totaling US$887,427.89 shall be borne by Respondent. Therefore, Respondent shall reimburse Claimant the additional sum of US$514,163.97, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

G. We have carefully considered, although not discussed in their entirety herein, all arguments made by Claimant and Respondent. Any other claims or requests for relief, made by either Party, are denied.

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, USA.

Date: April 29, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, USA.

Date: April 29, 2019

David M. Brodsky, Chair

John S. Martin, Jr.

Michael D. Young

State of New York)
) SS:
County of New York)

I, David M. Brodsky, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

5/9/19
Date

David M. Brodsky, Chairperson

State of New York)
) SS:
County of New York)

On this 9 day of May, 2019, before me personally came and appeared David M. Brodsky, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

ISAIAS MATEO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6274151
Qualified in New York County
My Commission Expires 12-31-2020

State of Florida)
) SS:
County of Lee)

I, John S. Martin, Jr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

_Date April 29,2019

John S. Martin, Jr., Arbitrator

State of Florida)
) SS:
County of Lee)

On this 29th day of April, 2019, before me personally came and appeared John S. Martin, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

ROBIN A. YEOMANS
MY COMMISSION # GG 121122
EXPIRES: November 3, 2021
Bonded Thru Notary Public Underwriters

State of New York)
) SS:
County of New York)

I, Michael D. Young, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

4/29/19
Date

Michael Young
Michael D. Young, Arbitrator

State of New York)
) SS:
County of New York)

On this 29 day of April, 2019, before me personally came and appeared Michael D. Young, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Vickie L. Johnston
Notary Public

VICKIE L. JOHNSTON
Notary Public - State of New York
No. 01JO6113098
Qualified in Queens County
My Commission Expires July 19, 20 20

EXHIBIT 9

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Monday, August 8, 2022
	9:30 a.m. Docket
Debtor.	
UBS SECURITIES, LLC, et. al.,	**Adversary Proceeding 21-3020-sgj**
Plaintiffs,	HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO WITHDRAW ITS ANSWER AND CONSENT TO JUDGMENT FOR PERMANENT INJUNCTIVE RELIEF [169]
v.	
HIGHLAND CAPITAL MANAGEMENT, LP,	
Defendant.	

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

APPEARANCES:

For Plaintiff UBS Securities, LLC:	Andrew Clubok Shannon Elizabeth McLaughlin LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004-1304 (202) 637-2335
For Plaintiff UBS Securities, LLC:	Kathryn (Katie) George LATHAM & WATKINS, LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611 (312) 876-6567

APPEARANCES, cont'd.:

For the Defendant:	John Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Defendant:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For Former Employees:	Eric A. Soderlund ROSS & SMITH, P.C. Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 377-7879
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - AUGUST 8, 2022 - 9:47 A.M.

THE COURT: 21-3020. Mr. Clubok, I saw you out there earlier. Are you appearing for UBS?

MR. CLUBOK: Yes. Good morning, Your Honor. Andrew Clubok; Latham & Watkins; on behalf of UBS. And I'm here also with my colleagues Kathryn George and Shannon McLaughlin.

THE COURT: Okay. Thank you.

All right. For the Debtor, Mr. Morris, are you appearing?

MR. MORRIS: Yes. Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones. I'm joined by my colleagues Jeffrey Pomerantz and Greg Demo for the reorganized Highland Capital Management, LP. And we have today with us Mr. Seery, who will present some live testimony today.

THE COURT: Okay. Good morning to all.

All right. The Committee was an intervenor, I believe, in this adversary. Is there any appearance by the Committee? Or I should -- well, --

MR. MORRIS: I think that was before the effective date, Your Honor.

THE COURT: That was --

MR. MORRIS: Yeah.

THE COURT: I guess we have no Committee anymore. The Liquidating Trustee. I don't know if the Liquidating Trustee stepped in the shoes of the Committee.

(No response.)

THE COURT: Okay. Anybody I've missed?

MR. SODERLUND: Your Honor, this is -- good morning, Your Honor. This is Eric Soderlund with Ross & Smith. We represent nonparties to this adversary: Scott Ellington, Isaac Leventon, Katie Lucas, J.P. Sevilla, Matt DiOrio, and Stephanie Vitiello. We're just monitoring the hearing, but I did want to make an appearance and let the Court know we're here.

THE COURT: Okay. Thank you.

All right. Well, if there are no other appearances, Mr. Clubok, you may proceed.

MR. CLUBOK: Thank you, Your Honor. Technically, I think --

THE COURT: Oh, actually, let me -- it's Highland's motion to withdraw --

MR. CLUBOK: Yeah.

THE COURT: -- its answer, so I was thinking Plaintiff go first, but actually it makes more sense for Highland to go first. So, go ahead.

MR. CLUBOK: Yes.

MR. MORRIS: Thank you, Your Honor. Again, John Morris from Pachulski Stang for Highland.

We're here today on Highland's motion to withdraw its answer and to consent to the judgment that has been requested by UBS.

We thought it was very important, Your Honor, to create an evidentiary record to enable the Court to rule on that motion.

As Your Honor will recall, at the time this adversary proceeding was commenced, Highland had just recently discovered and had shared with UBS certain facts that it had identified with respect to the transfer of certain assets that appeared to belong to entities against which UBS had obtained a judgment.

And at the time the action was commenced, the Reorganized Debtor -- I guess at that time it was really still the Debtor -- did not feel that it had sufficient personal knowledge in order to address the merits of the allegations that were made. And so we specifically told the Court and all parties in interest that we felt we needed a fulsome evidentiary record. And having concluded that, Mr. Seery on behalf of the Reorganized Debtor seeks to terminate this litigation and confess to judgment.

I've got a brief opening statement that I'd like to make, but before I do that, Your Honor, there has been one meaningful development since we last met with the Court that I'm going to defer to Mr. Clubok to report at this time.

THE COURT: All right. Mr. Clubok?

MR. CLUBOK: Yes, Your Honor. Sometimes we -- development is a euphemism for something bad, but in this case it's something good. And that is we, on Friday morning,

reached a memorandum of understanding with Sentinel that we believe will ultimately result in several papers that we will be -- that will be submitted to the Court I believe through the 9019 process, hopefully in a matter of weeks.

Now, that's going to resolve a large portion of what we're doing here today, but really it sort of highlights the fact that what UBS has always wanted in this proceeding is for the Court to issue a permanent injunction so that all of these assets are frozen, the ones we know about now and probably the ones we keep finding. Every time we turn around, we find a new one. By permanent, we mean until a court orders the disposition through a proceeding or pursuant to a settlement.

So this new news from Friday is good, and it really sets the table for this proceeding so that we can do this once and for all, ideally, where the Court hopefully agrees with what apparently Highland agrees, there should be an injunction, that we've met the standard, assuming we can present the evidence to you. And I would note that public interest is a factor, too, so that's another reason why we just want to make sure we have a full evidentiary record.

We will not then need to repeat this record, we can then use the same record and refer to it for the expected 9019 process, and we can be very efficient.

Also, in light of that and in light of other stipulations we've reached, I just wanted to advise the Court we do think

we can have a relatively streamlined process here. For example, I am going to defer my opening statement and just let Mr. Morris make his opening statement and his presentation, and I'll defer until the back half.

We've also agreed to stipulate to I believe all of the exhibits on each other's lists. If Your Honor would like me to specifically read out the numbers, I can do that for housekeeping. If it's more convenient, just very quickly I can identify the exhibits, at least on UBS's list, and then Mr. Morris can add his as well, so we don't have to keep doing that as Mr. Seery testifies.

THE COURT: All right. Thank you for that report. Let's go ahead and get the exhibits on the record before we do anything else.

Mr. Morris, it looks like you had, at Docket No. 176, Exhibits 1 through 10 designated. Is that correct?

MR. MORRIS: That's correct. And with Mr. Seery available to testify, we'd also respectfully move into evidence his declaration, which can be found at Docket No. 170.

THE COURT: All right. So I'm hearing, Mr. Clubok, no objection to that?

MR. CLUBOK: No objection, Your Honor.

THE COURT: So the declaration at 170, as well as the 10 exhibits at 176, will be admitted.

(Defendant's Exhibits 1 through 10 and the declaration of James Seery are received into evidence.)

THE COURT: And then turning to UBS's exhibit list, UBS at Docket 177 had it looks like 41 or 42 exhibits, including the declaration of Mr. Seery. There's no objection, Mr. Morris, to all of those coming in?

MR. CLUBOK: Your Honor, briefly, we did file an amended --

THE COURT: Oh.

MR. CLUBOK: -- exhibit list this morning that we have -- that we have provided in advance to Mr. Morris. It's obviously not made its way to you yet. It's Docket No. 179. And we -- if you haven't gotten hard copies yet, you won't need them for the purpose of this hearing, but you'll have them shortly if you don't have them yet. We have extra for the relevant exhibits that we'll put up on the screen each time we refer to them.

THE COURT: All right. So, are they filed on the docket or did you deliver hard copies?

MR. CLUBOK: Yes. I believe both, Your Honor. It's 179. I have Docket 179.

THE COURT: Okay. I'm pulling it up.

MR. CLUBOK: And the hard copies, I guess -- maybe the hard copies haven't yet been delivered, but they're on their way and you should get them by -- by the end of the

hearing.

THE COURT: Okay.

MR. CLUBOK: Or shortly thereafter.

THE COURT: Bear with me.

(Pause.)

THE COURT: Okay. There they are. 179. Okay. It looks like you've added some exhibits, so we're now up through 51 exhibits. Is that correct?

MR. CLUBOK: I believe that's right, Your Honor. I can -- just because there's a couple of gaps, maybe if it would help I can just read the numbers of the ones that we wish to move into -- for the record, so the record's clean, I'll just read off the numbers?

THE COURT: Okay.

MR. CLUBOK: So, we -- UBS would like to move into evidence Exhibits 1 through 12, Exhibits 14 through 23, Exhibits 25 through 35, Exhibits 37 through 53. And with the one caveat being, Your Honor, that some of those exhibits are deposition transcripts. For those, we have designated the portions that we'd like to move into evidence through highlighting. And you'll, if you haven't already, you'll be receiving those as well. And so it's the -- for the deposition transcripts of those exhibits I just identified, it's the highlighted or designated portions.

THE COURT: Okay.

MR. CLUBOK: And all this has been shared with Highland.

THE COURT: Very good. And Mr. Morris, do you confirm you're okay with those coming in?

MR. MORRIS: I do. I just want to make a very brief note that the reason we have no objections to the exhibits today isn't because we don't have views as to the evidentiary rules. We actually exchanged exhibit lists on Thursday before they were filed with the Court. Highland did object to a number of exhibits that were on UBS's proposed exhibit list and they withdrew them. And so that's really the reason why there is no objection today, is because we actually took the time to meet and confer and to go through any evidentiary concerns prior to today.

So, with that background, Highland has no objection.

THE COURT: Okay. So these UBS exhibits named will be admitted.

(UBS Securities, LLC's Exhibits 1 through 12, 14 through 23, 25 through 35, and 37 through 53 are received into evidence.)

THE COURT: All right. Well, are we ready for opening statements? Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: You may proceed.

MR. MORRIS: Thank you very much.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski Stang; for Highland.

We're here today on Highland's motion to withdraw its answer and to confess to judgment. And I want to just cover certain facts that we believe will be reflected in the record and to share with Your Honor certain perspectives that we have.

The facts here I think are largely not in dispute. They concern the August 2017 transfer of assets from certain funds that were under the control of James Dondero to a Cayman Islands putative insurance company that was owned by Mr. Dondero and Mr. Ellington.

The evidence will show that the funds that transferred their assets to Mr. Dondero's -- at Mr. Dondero's direction were defendants in a lawsuit that was brought by UBS in New York and that the transfers were effectuated immediately after the New York court denied the Highland entities' motion for summary judgment.

The evidence will show that the Debtor's independent board was unaware of these transfers until they were uncovered in late January and early February 2021, and that the reason for the transfers was unknown until that time by the independent board precisely because certain former Highland employees actively and intentionally worked to conceal them.

I don't have a PowerPoint presentation today, Your Honor. I want to just look at three documents. The first one is an insurance policy. And the reason for the transfers ostensibly was to purchase what is called after-the-fact insurance. And what's on the screen now is Highland's Exhibit 1. And if we can go to the first page, you'll see that it's an email from Isaac Leventon to someone named Chris Dunn. It's dated October 2017. So this is just a few months after the court in New York has denied summary judgment, and it follows on the heels of an analysis that was prepared that I think is at UBS Exhibit No. 7, an analysis of settlement options and optionality following that decision.

Mr. Leventon attaches an insurance policy. He labels it privileged. He says that all communications related to the project are privileged.

You know, Your Honor, he's attaching an insurance policy. I know of no basis to assert any privilege of any kind, but this is the litigation team, if Your Honor will recall, that was found to be subject to the crime fraud exception in Delaware. It's the team that was found by the arbitration panel in Redeemer, the Redeemer arbitration, to have engaged in misleading conduct.

Again, it's troubling to find this document. And here's the thing, Your Honor. You may be aware that UBS took numerous depositions in this case. This particular document

wasn't uncovered -- actually, no, I'm confusing it with a different document. So this document is sent by Mr. Ellington, and he attaches the insurance policy.

If we could go to Page 19 of 20 of the PDF, and let's just see exactly what this policy is. It's to insure certain funds. These are the funds that are the Defendants in the UBS action. The appointed representative is Paul Lackey, an attorney now with the Stinson firm. Mr. Lackey is the representative here. It's a policy that was effective as of August 1, 2017. And it specifically covers the UBS action.

You'll see below, Your Honor, that it's supposed to be for a $100 million policy with a premium of $25,000. $25 million. So think about it. The New York court comes out with its decision. They transfer all the assets from the Defendants other than Highland to Mr. Dondero's captive insurance company in the Cayman Islands. And they don't tell anybody.

And if we can go to the next page, you can just see Mr. Dondero's signature on behalf of the various entities. And the important point for us here, Your Honor, as the Debtors, the former Debtors, the reorganized Highland, is that Highland CDO Opportunity Master Fund is one of the insureds here, and they're signing the document -- it's being signed by Highland CDO Opportunity Fund GP, its general partner; Highland CDO Opportunity GP, LLC, its general partner; and Highland Capital Management, LP, its sole member.

So the acts that are being undertaken here, unbeknownst to the independent board, Mr. Seery, and the postpetition professionals, is that there was a transaction back in August of 2017 in which the assets of the Defendants were put beyond the reach of UBS.

The $25 million insurance payment premium was funded at the same time, if we can go to Exhibit 2, with what's called a purchase agreement. This purchase agreement, you can see, Your Honor, is dated as of August 7, 2017. It's between Sentinel Reinsurance and the two funds that were Defendants. It is through this agreement that the funds transferred their assets to Sentinel.

Sentinel is, I think I mentioned, a Cayman -- right, no dispute about these facts -- is a Cayman Islands entity owned by Mr. Dondero and Mr. Leventon.

And if we could go to Pages 4 and 5, we'll see again Mr. Dondero signing on behalf of all of the Highland entities.

MR. SODERLUND: Your Honor, this is Eric Soderlund. I just want to interrupt here. I think Mr. Morris said that Sentinel was owned by Mr. Leventon.

THE COURT: Actually, I heard the same --

MR. SODERLUND: I don't think that's true.

THE COURT: I heard the same thing. Did you mean Ellington?

MR. MORRIS: Right. Thank you. I did mean

Ellington.

THE COURT: Okay.

MR. MORRIS: Thank you so much.

THE COURT: Thank you.

MR. MORRIS: Appreciate the clarification. We -- I do need to get this right.

So, you can see that Mr. Dondero is signing on behalf of all of the Highland entities on Pages 4 and 5.

And if we can go down to Pages 7 and 8, you'll see attached is a schedule. And what's really interesting, Your Honor, is that if you add up the assets that are being transferred to Sentinel, they don't equal $25 million. They equal something approaching $300 million. And there will be other evidence in the record that shows the fair market value at the time was over $100 million.

In other words, the Defendants in the UBS action, the evidence, and there really can never be a dispute about this, transferred what appears to be all of their assets, with a value in excess of what the benefit is under the so-called insurance policy.

Why are these issues -- we can take this down now. Why are these issues important, Your Honor? At Mr. Dondero's direction, the funds were left judgment-proof. The only assets it apparently had was this insurance policy.

This became critical in the spring of 2020, postpetition,

when the New York court entered judgments against the two funds in amounts in excess of $500 million each. So those judgments early in 2020 were for over a billion dollars. But these transfers by these Defendants were never disclosed to the board.

The evidence will show and Mr. Seery will testify and the documents will corroborate his testimony that the transfers were not only never disclosed, but that the independent board relied specifically on Scott Ellington and Isaac Leventon to learn about the UBS claim, to determine the defenses that the Debtor asserted. And as Your Honor will recall, in 2020 the Debtor spent enormous time, money, and effort, as the Court did, defending against the claims against Highland. We took -- we didn't really have an interest in the claims against these two funds, but as to Highland at that point we had no reason to believe that Highland had been engaged in any wrongdoing, and we litigated accordingly. That's why this is all so terribly important, Your Honor.

The evidence will show that, at the independent board's direction, the Debtor's professionals pressed the Debtor's employees for information relating to the funds' assets, only to be effectively stonewalled.

I don't want to take the time to go through all of the emails, but at Exhibits 5, 6, and 7 there is evidence in the record that will show the Court -- to me, it just, you know,

it jumps out -- the answers that were given, you know, to Mr. Demo and DSI's dogged and persistent inquiries. And you'll see, Your Honor, that these employees did nothing but obfuscate, engage in misdirection, and feign ignorance as to basic matters. We just had a judgment entered for over a billion dollars, and nobody told us about the transfer of these assets in 2017, or the existence of the insurance policy.

And we think that we know why. Because -- and this is the document that we uncovered after the depositions, so nobody has ever been asked about this -- but we found a document late last year that's called an indemnification agreement. It's a secret indemnification agreement between these employees and Sentinel, and it was dated June 18, 2020. It is hard to think of a document that could convey a consciousness of guilt more than an indemnification agreement entered into weeks after the New York court enters a billion-dollar judgment against Defendants who have transferred all of their assets to the indemnitor. Hard to imagine.

Mr. Dondero does not act alone. We've spent two years talking about Mr. Dondero. Mr. Dondero does not act alone. He is assisted by a group of loyalists who do his bidding in exchange for substantial compensation and protection.

June 2020. At the very moment that Mr. Dondero is making those $10 million of payments that he admitted to in open

court back in April, his insurance company is also indemnifying Highland employees. And the source of the indemnity are the assets that have been -- that were transferred in 2017 from these Defendants to Sentinel.

Let's look at the indemnity agreement. It's Exhibit 9 on the Debtor's exhibit list. And you'll see, Your Honor, in Exhibit 9, if we could just scroll down, you can see that it's sent to an entity called SAS Asset Recovery. You'll see in the emails that I cited to earlier that Mr. Demo and DSI asked numerous questions of the indemnitees, unknown to them at the time, about what SAS was, and they all said they had no idea. And yet this is an agreement dated June 18, 2020, on behalf of Sentinel Reinsurance, where they -- where Sentinel indemnifies six individuals.

And the language is startling, Your Honor, because while Mr. Ellington has an ownership interest and Matthew DiOrio is a director of Sentinel, the other signatories to this indemnity agreement, to the best of our knowledge, have absolutely no formal relationship with Sentinel in any way, shape, or form, and yet Sentinel is thanking them for their efforts, including as an agent in connection with the preparation of documents and reports and, quote, other activities as requested by Sentinel.

Postpetition, undisclosed, and it's issued at the time huge payments of money are being made after the New York court

has issued its judgment and as Mr. Demo and DSI began -- begin making very substantial inquiries as to the location of these assets.

If we could go to Page 5, please. I want the Court to be aware of the names of the signatories to this indemnity agreement. We have Matthew DiOrio. Next page. Stephanie Vitiello. Next page. Katie Irving. Next page. Isaac Leventon. Next page. Scott Ellington. Next page. J.P. Sevilla.

Your Honor, those six individuals are all over Exhibits 5, 6, and 7, the emails where Mr. Demo and DSI and Mr. Seery are trying their hardest to find out whatever information they can about SAS, Sentinel, and the assets of these two funds. These are the six people who signed the indemnity, and they're the six people are responding to the inquiries with no meaningful factual information.

The transfers and the cover-ups have substantially harmed the Debtor. The actions taken in 2017, in our view, were plainly wrongful. They left Defendants judgment-proof. They transferred assets to the Cayman Islands. They supposedly paid over a hundred million dollars for a hundred-million-dollar policy.

The Debtors spent significant time, money, and efforts, substantial resources. They stand accused all the time of, oh my god, they're spending so much money. Think about what --

and Mr. Seery is going to testify to this -- about how much time, money, and effort went to defending against UBS's claim against Highland. The mediation where we didn't have this information. The motion for partial summary judgment. The 3018 proceeding. Right? And we finally got to a settlement with them without this information.

The damage caused to the Debtor and the independent board. We sat there and we made representations to the Court. You know, in hindsight, they were not accurate. They just weren't. And they weren't accurate. They weren't accurate to UBS, they weren't accurate to the mediators, they weren't accurate to the Court, because we just didn't know. We didn't know anything about the policy. We didn't know anything about the asset transfers. Substantial damage. Chasing nothing.

Most critically, Your Honor, it deprived the Debtor of currency to settle its claim with UBS on favorable terms, and that is the greatest damage of all. Highland was forced to renegotiate its settlement with UBS because, based on Mr. Dondero's signature under the Highland Capital name back in 2017, and based on the conduct of those six employees, Highland had liability where it believed there was none. And consequently, it had to -- had to increase very substantially, by tens of millions of dollars, the allowed claim with UBS. And then -- and then stand as a Defendant in these proceedings.

We've been damaged hard. This is not -- this is not the way the process is supposed to work. The massive transfer of assets that leave Defendants judgment-proof. Undisclosed and secret indemnity agreements that in and of itself constitutes a massive breach of duty. The cover-up that immediately followed the execution of the indemnity agreement.

We are just bankruptcy lawyers, Your Honor. Our duty is only to maximize recovery for creditors. We're not prosecutors. We're not the SEC. We're not the U.S. Trustee's Office. We're not the Texas Committee of Attorney Discipline. There's only so much that we can do. We'll continue to do our jobs, and we're not presenting everything that we have here today, and our investigation continues. But if nobody is held accountable for this type of conduct, then the system is broken. And I hope that's not the case.

So, we had expected Sentinel and its owners to intervene and defend their conduct in this matter, but they chose not to, although I'm grateful that their attorney or at least the attorney of the individuals are here.

I do want to point out just one clarification. And Mr. Clubok or Mr. Seery may correct me. But the directors at Sentinel today who authorized the entry into the MOU are new directors, and Mr. DiOrio and the others resigned as the heat was being turned up last spring. They were replaced by new directors. And that's, in our opinion -- this is not fact --

in our opinion, that's what enabled Sentinel to reach this agreement that Mr. Clubok described.

But make no mistake. We don't pretend that we know where all assets are. We don't pretend that we know the value of the assets that may have been transferred. But based on the evidence that Mr. Clubok and his team adduced during this adversary proceeding, the Debtor, Highland, does not believe it can defend against the claim, and therefore is prepared to withdraw its answer and confess to the permanent injunction that was sought by UBS.

That's all I have.

THE COURT: All right. Well, Mr. Clubok, I understood you were waiving your opening statement, correct?

MR. CLUBOK: Yes, Your Honor.

THE COURT: Okay.

MR. CLUBOK: I'll defer it to my presentation.

THE COURT: All right. Mr. Morris, you may call your first witness.

MR. MORRIS: With that, we'll call James Seery.

THE COURT: All right. Welcome back, Mr. Seery.

MR. SEERY: Good morning, Your Honor.

THE COURT: Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Morris?

JAMES SEERY, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery. Can you hear me okay?

A I can, yes.

Q Okay.

A Apologies on my end. There is some construction in the background. If it interferes, please let me know. I'll try to speak loudly.

Q Okay.

MR. MORRIS: Your Honor, we're not going through every fact, and I actually don't even plan to share with Mr. Seery any particular exhibits, so that we can try to get through this fairly quickly. But if Your Honor has any particular questions, of course, feel free to interrupt.

BY MR. MORRIS:

Q Mr. Seery, can you please just describe at a general level your involvement with the Highland bankruptcy, including the timing and titles that you've obtained?

A Yes. In the beginning of 2020, January 9th, I was appointed as an independent director by the Court. Prior to that, I didn't have any involvement with Highland. Prior to 2008, the business I ran at Lehman did business with Highland, but between 2008 and 2020 I had no involvement whatsoever with Highland. Was appointed as an independent director on January 9th, working with John Dubel and Russ Nelms, who were also

appointed as independent directors. And then in July, I believe, of 2020, I was appointed by the Court as the interim CEO and CRO of Highland Capital.

Q Okay. Did there come a time that you learned of the UBS claim in this case?

A Yes. I learned of the UBS claim before I was even appointed as an independent director. UBS had gotten a decision prior to judgment in I believe November of 2019. Prior to my apartment, I did diligence, and one of the diligence items was to read that decision.

Subsequently, in I believe it was February of 2020, UBS obtained an actual judgment against the two subsidiaries, both indirect, but CDO Funds, which was a little bit more direct subsidiary fund of Highland's, managed by Highland, and SOHC, which was a direct subsidiary of HFP, which is Highland Financial Partners, an indirect subsidiary of Highland.

Q And after being appointed, did the independent board do any work to try to understand, you know, the merits and potential defenses of the UBS claim?

A Absolutely. This was one of the critical issues in the case. This, as I said, was a billion-dollar judgment against subsidiaries, and the question was, was Highland liable? There was really no question that the subsidiaries were liable. There was already a decision and a judgment in February. But was Highland going to be liable for that

decision?

UBS had theories, and we -- me, specifically -- did hundreds of hours' worth of research and work around the claims, and I'm sure my fellow directors read and analyzed documents similar to the way that I did.

Q And did Mr. Leventon and Mr. Ellington make any presentations to the board concerning the UBS claim?

A Yes. Mr. Leventon was the point person at Highland managing the UBS litigation. He had been, as he described to me directly on my first day, one of his chief jobs and one of the reasons he was hired was to help manage the UBS litigation. He reported directly to Mr. Ellington, who was the general counsel and an officer of the general partner of Highland. Mr. Ellington described himself as the person chiefly responsible for all negotiations with UBS.

So, everything to do with the underlying transaction, the ten years of litigation, and the various stops and starts in potential settlements was encompassed by the knowledge held by Mr. Ellington and Mr. Leventon.

Q Can you describe for the Court kind of your understanding of the structure of the Highland legal department, the hierarchy and who reported to whom and who was there?

A Yes. The legal department at Highland was a large group, headed by Mr. Ellington as general counsel.

Mr. Leventon was responsible for all litigation.

Mr. Sevilla was a senior attorney who handled predominantly transactions.

Mr. DiOrio was not an attorney but worked in the legal department.

Ms. Irving was not an attorney but worked in the legal department.

In addition, tangentially, or dotted-line, I think, basically report, the CCO, Thomas Surgent, was connected to the legal department.

And Tim Cournoyer was a transaction lawyer in the legal department.

Other lawyers had come in and out, and there was a paralegal, Helen Kim.

Stephanie Vitiello was also an attorney in the legal department.

But that was the core group when I became an independent director.

Q And I think you mentioned this at a very high level, but how did the board educate -- how did the board interact with the Highland legal group to educate itself on the merits of the UBS claim against Highland, the potential defenses that there was? Just give us a sense of, you know, what the interaction was and what the interface was.

A Well, day-to-day -- and right at the beginning of the case, as I say, a critical issue -- a ton of time spent with

Mr. Leventon going through every aspect of the case.

In addition, as I mentioned earlier, I read every document related to the transaction and every one of the court decisions that had been previously issued. Many of those raised questions, and I'd address those generally to Mr. Leventon as the point person.

There came a time in January or early February, pre-COVID, so on the premises of Highland, that there was at least one, possibly two, multi-hour meetings about the UBS litigation. Mr. Leventon led those discussions, really educating myself as the lead director, but also Mr. Nelms and Mr. Dubel as independent directors about this critical issue.

Very specifically, Mr. Leventon provided a detailed PowerPoint deck which he went through. And I recall it because it'll come up later on with another deck that we found from 2017 that had an unusual font, one that you typically don't seem in PowerPoints. So Mr. Leventon presented that and walked through every step of the transaction, what in his view, or at least what he communicated to us, had happened, how the subsidiaries were set up, his statements that they were special purpose entities and that they had no assets, and how the litigation then unfolded after the default in 2000 -- late 2008, early 2009.

Q And based on the review that you've described and your own due diligence, based on the facts that you had at the time,

did the independent board form a view as to its perception of the merits of UBS's claim against Highland Capital Management, LP?

A Yes. I and the rest of the board, based upon the -- both the documents we reviewed and the description of the circumstances and the litigation provided to us by Mr. Leventon primarily and Mr. Ellington and the other people in the legal department -- and I should just, as an aside, say the ones in that meeting are Sevilla, DiOrio, Irving, Ellington, Leventon, nobody else. I don't recall Stephanie Vitiello being in that particular meeting or meetings. But our view that we developed from those -- from that work and from the independent work we did was that Highland didn't have any liability for the UBS judgments. It was clear that the subsidiaries did, and the underlying documents made clear that they were responsible to UBS. But our perspective from that work and the information we received from the legal department was that UBS was reaching, its claims were only against subs that never had any assets, and that Highland should not be held responsible for any of the damages from the transaction.

Q And do you recall, at around the time of the mediation in the summer of 2020, did UBS press their informational requests for documents concerning the assets of the funds? Do you recall that at all?

A Yes, they did. They actually started earlier, and we took

the perspective initially that we didn't need to provide any documents to them because we were going to really move for summary judgment. We took a very aggressive posture in respect of that position.

When we came to the mediation, there was a slightly different structure and relationship in that you're trying to work towards an understanding, so you really weren't able, between the parties and the mediators, you know, you weren't really able to say, we're not going to give you anything, so we took the perspective that we should just turn over everything because we've got nothing to hide.

And UBS took that very directly and made pretty substantial discovery requests on us with respect to their claim and the mediation, particularly with respect to the underlying assets that they claimed that the CDO Fund and SOHC had and wanted to know what happened to them. And the Highland legal department, as previously described, led by Leventon, said they didn't exist and there were no assets.

Q Did they in fact, though, identify, I think, two assets?

A Ultimately, --

Q (overspoken) and the Multi-Strat?

A Ultimately, they identified, and this was Mr. Leventon, cash that had been used for -- purportedly used for legal fees. And it was a significant amount. And that was a bit startling, because previously we'd been told there was no --

there were no assets there, so it was startling that all of a sudden, well, there was cash, but it was spent. And we pressed Mr. Leventon on that.

In addition, they identified interests in -- potential interests in an entity called Greenbrier. And that was a very confusing description from Mr. Leventon, and it didn't make a lot of sense. But if there was an asset in CDO Fund or SOHC that was owned and had value, then it should have been incumbent on Highland to discover that asset and use that asset in settlement, because, from our perspective, if there was anything in those subsidiaries, we should turn it over to UBS and try to use that to settle the litigation, because it would never come to Highland since these entities had judgments in excess of a billion dollars against them.

Q All right.

MR. MORRIS: Your Honor, just so the record is clear, the emails that relate to these issues can be found at Exhibits 5 and 6. They're from August 2020.

THE COURT: Okay.

BY MR. MORRIS:

Q And do you recall, in the fall, based on the information that the independent board had at the time, that the Debtor proceeded with their motion for summary judgment and their 3018 hearing with UBS?

A Yes. And previous to that, we'd gone through the

mediation with two experienced mediators. It was a very intense experience. Aggressive from both our side and UBS's side. So we had gone through that mediation.

We had endeavored during the mediation to provide discovery around this Greenbrier and any other assets. Both Mr. Leventon and Mr. Ellington made very specific representations to me and to the board and to our counsel regarding lack of assets and the ability to find any assets and that there was really nothing there.

So we went through the mediation and were unable to resolve anything with UBS. The parties were incredibly far apart. And we decided to move for summary judgment. And that became a very tall order because of the complexity of the claims and the complexity of the underlying litigation.

We dug in really hard on that, and ultimately had a hearing both with respect to summary judgment -- partial summary judgment as well as with respect to estimating UBS's claim.

Q And as the calendar rolled towards the end of the year, do you recall that the Debtor was preparing for confirmation?

A Yes. We had developed the monetization plan in the late fall of 2020. We were at the same time trying to structure potential settlements with the creditors. We took the perspective with respect to UBS that it was unlikely we were going to get a settlement. And so as we moved forward with

the plan, when looking at it, can see there's a lot of mechanisms that basically assumed that we won't be settled with UBS. They'll be on an oversight board, but that ultimately we're going to be litigating with them to determine what their claim could be.

Q I'm not testifying, but I do remember there was an awful lot going on in January 2021. Did you and the independent board ultimately reach an agreement in principle with UBS on the resolution of their claim?

A Yes. And coming into -- your statement about January 2021 is absolutely correct. But it really went through the fourth quarter and then January 2021.

As the Court will recall, we had a number of hearings in December of 2020 that were intense: contempt, injunction, preliminary to the plan process, disclosure statement. There were depositions. There were challenges -- there were significant challenges to Highland's management of both its assets and managed fund assets.

We discovered some significant problems with what we thought was going on in the legal department at that juncture, which led to the termination of Mr. Ellington and Mr. Leventon on January 5, 2021. And then January 2021 was chockful of hearings from contempt to HarbourVest to preliminary injunction, and ultimately confirmation at the beginning of February.

Q Did the termination of Mr. Leventon in particular have any impact on the independent board and management's ability to access information?

A Well, both Mr. Leventon and Mr. Ellington then opened up -- which we probably could have done before -- but opened up our access to their email accounts. And in respect of Mr. Leventon, an interesting thing happened when I went to send him his termination notice. Microsoft Outlook thankfully filled an entity called SAS Management into the address bar. And I didn't know what SAS Management was. I had no familiarity with it. It wasn't something I'd seen. So I tasked outside counsel, Mr. Demo, as well as DSI, Mr. Romey, to figure out what SAS was and why that was showing up for Mr. Leventon. That led us to do reviews of their email, and particularly Mr. Leventon, a significant amount of information that we developed over the next several months.

Q And did you instruct my colleague, Mr. Demo, and DSI to continue to pursue, you know, any information relating to SAS?

A Absolutely. What we did was we -- at the same time we were doing this, we were trying to settle with UBS. One of my fellow directors was really leading that. I didn't think there was much chance of settling with them, primarily because I thought there was no way to bridge the gap. And frankly, I was of the firm, firm view that Highland shouldn't have any liability because the allegations that Highland had prevented

UBS from recovering on its judgments really didn't have any basis based on the facts that I had at the time.

But as we continued to look at what SAS might be and whether that was an asset of the Debtor and what it meant to the Debtor, whether Debtor employees were involved, we started finding more and more information about other assets and other dealings with respect to UBS.

We did find that this SAS entity had been around for quite some time. It was, in essence, a secret entity. The legal department -- Ellington, Leventon, Sevilla, Vitiello, I believe, Irving, DiOrio -- all had SAS, my recollection is all had SAS Management emails. They were stored on a separate server so we couldn't uncover those. We could only find things that were sent to the SAS server.

Q And did any of those individuals share with you or the Debtor's professionals any substantive information concerning SAS at the time?

A None at all. What we did do, though, is because we could then use SAS to search through the entire Highland databank, we did find -- let's see how to describe it; we have a colloquial term that I won't use -- but charts that showed the ownership of SAS and the -- and that led to the ownership of Sentinel. And we didn't know what Sentinel was, but one of our outside professionals recalled Sentinel is a redeemer out of the Multi-Strat fund. So that got us looking at who is

Sentinel and who owns Sentinel.

The records were ultimate beneficial owner, what they call UBOs, but because of the requirements of the Cayman authorities, ultimately Mr. Ellington and Mr. Leventon -- Mr. Dondero had to produce their passports and information to show the ultimate beneficial owners, but they're never actually listed as Mr. Ellington and Mr. Dondero. They're only listed on the charts as UBO 1 and UBO 2.

And that shows a whole bunch of different entities, including SAS. And apparently, Ms. Irving worked on a lot of this stuff in the Caymans for either SAS or for these other entities, notwithstanding being a full-time employee of Highland in the legal department.

Q Was -- do you recall if Matt DiOrio was involved in responding to the requests of you and your team in January and early February 2021?

A Yes. So, after Mr. Leventon's termination, Mr. DiOrio was tasked by Mr. Demo and Mr. Romey to help figure out what SAS was, what Sentinel was, and any information regarding these Cayman entities.

He professed ignorance. We now know that he was a director at the time of his protestations of no knowledge. And in addition, he, with respect to other people on the email chain, texted some and said, I've got this, notwithstanding that he didn't produce any information, even though he had

been directly asked for it.

Q When you say that --

MR. MORRIS: Ms. Canty, can you put up Exhibit 10? It's just a text message. I just want to make sure the Court understands the context for Mr. Seery's testimony.

But Your Honor, while she's doing that, I would just point the Court to Highland's Exhibits 7 and 8, which are other lengthy email strings from late January 2021 where, at Mr. Seery's direction, the Debtor's professionals were seeking information about these matters.

And if we could just scroll down here, what's on the screen now is Exhibit 10, Your Honor.

BY MR. MORRIS:

Q Mr. Seery, can you just describe for the Court what your understanding of this text message is?

A See if I can see it. This is a text message from DiOrio to Thomas Surgent. Thomas, as I said, is in the legal department tangentially, but is really the CCO. This is Mr. DiOrio telling Mr. Surgent, I've got the request, you don't have to worry about it.

And so that led to a number of obfuscating emails as well as a failure to respond and significant delays. Ultimately, when -- and I'm not sure if this was before Mr. DiOrio was terminated or after he was terminated, as soon as we went to Mr. Surgent directly, he quickly provided the documents --

searched for them and found the documents that we needed on the Highland system.

Q Okay. So let's --

MR. MORRIS: We can take that down now. Thank you very much.

BY MR. MORRIS:

Q Let's just go to the next step. What does the independent board learn in late January or early February -- withdrawn. Did there come a time when the independent board made a disclosure to UBS?

A Yes. So, as we were doing this work in January and early February -- and remember, as I said earlier, this is while there's probably five to ten hearings going on that are crucial in the case. I'm giving multiple depositions. We're trying to figure out assets. We're terminating employees. We're negotiating or attempting to negotiate a transition agreement for the businesses. It was incredibly busy.

But we came across this Sentinel entity, and we came across the fact that it was a redeemer in Multi-Street, and then ultimately led us to find the after-the-event insurance policy, this ATE policy, which I'm not an insurance expert but I know enough that it's not really a thing. There's after-the-event policies that typically cover attorneys' fees in a loser-pays jurisdiction. There's no such thing as a policy where you go to an insurance company and take $100 million

worth of assets and buy $100 million worth of coverage. It doesn't provide you any benefit. It's not a thing.

Q So, we did --

A But my point -- sorry, John, I digressed. We have -- we have the contempt, we have all these different things going on, and we're finding different information. And we find out about this policy as negotiations at the same time is going on with UBS to try to reach a settlement on their claim. And that was directed by one of the other directors as this was going on.

And recall that the policy was purchased by CDO Fund and SOHC. As I said, SOHC is an indirect subsidiary. So is CDO Fund. But CDO Fund was controlled by Highland. Highland controlled the GP. Highland controlled SOHC. That policy was the only asset -- I mean, CDO Fund. That's the only asset of CDO Fund. Highland's control of that is a valuable asset of Highland, but it's been hidden from Highland. Completely hidden.

We discover it. We had reached a settlement with UBS while we were doing this work, but we didn't -- we hadn't discovered this, all of this information. I think we announced the settlement with UBS at the -- at the confirmation hearing. I think it was on February 2nd. And later on in the month, as we were working on documenting that settlement -- and documenting a settlement with UBS and the

Latham team is not an easy thing. Not because they're not good to their word; they're just (audio gap), as maybe I am. And so that getting that deal documented was taking a while. And we discovered this information, and I couldn't go forward with a deal with UBS, knowing the information I had without sharing that information with them, because it would have been fraudulent, in my opinion.

And so we told them we're not going to enter the settlement agreement. They were a bit shocked. And we told them, well, we need to tell you why. And then we laid out the information to them, which initially set them back to figuring out what they wanted to do, and then ultimately came back to the table to renegotiate the settlement agreement with them.

Q And as a result of the information that the Debtor shared with UBS, did UBS and the Debtor renegotiate the deal that they had presented to the Court at the confirmation hearing?

A We did. And the dates on that are March 21 into April. So we've got a decent amount of information. Not everything, but we've got a decent amount of information that maybe some of their allegations about Highland interfering with their judgment activities was true. And we renegotiated that settlement, upping the claims by about $50 million, the allowed claims that they would get.

Q Why did the independent board decide to share this information with UBS at the time that it did? Why not just

take the deal that you had?
A Well, number one, first and foremost, we're fiduciaries. And we're fiduciaries to the estate. Our job is not to defraud the creditors. It's to fight hard to make sure that legitimate claims are allowed but that illegitimate claims are kept out. And we thought, both myself and the other directors, that we couldn't enter into a settlement in good faith when we have knowledge that the underlying facts that the counterparty were relying on were untrue and that we'd provided a lot of that information to them. We had represented to them that there were no assets based upon the information we had been given by Leventon and Ellington in particular.
Q Do you recall that right around the time the parties presented their proposed settlement to the Court UBS also commenced this action?
A Yeah. I think it was -- it was probably the next day.
Q Uh-huh.
A And recall that all of this is while the transfer took place two years prior to filing. All of this cover-up. All of this misdirection. All of the expenditure and the additional damages that Highland suffers is postpetition by officers and attorneys at Highland. In-house senior attorneys on the payroll full-time at Highland.
Q After the action was commenced -- withdrawn. Did the --

did Highland agree to temporary and preliminary injunctive relief?

A I believe we agreed to the temporary preliminary injunction. But we had not yet settled the action completely.

Q And why is that? Why did the Debtor agree to the temporary relief but not the permanent relief?

A Well, the information that we had certainly justified at least a preliminary injunction, in our opinions, because there were -- we didn't have all the information, but it was very clear that there had been material asset transfers and that funds were going to continue to run through the assets that either Highland had or Highland managed that would continue to flow to this Cayman entity.

And those funds had flowed during the case. And in fact, during the case, some of these same individuals, during the bankruptcy case, moved assets around in the Caymans. It wasn't as if they'd forgotten about them.

So we felt that at least a preliminary injunction to keep the status quo and prevent further leakage of assets and protect potentially liability for Highland was appropriate. That subsequently led us to do additional work, and we really didn't have enough at that time to just agree to consent to the judgment.

Q And with respect to discovery, are you aware of any additional documents that were uncovered after the action was

commenced?

A Yes. UBS commenced discovery, both document discovery and depositions. And while discovery in the Caymans is not usually that easy, or any foreign jurisdiction, in my experience, the manager, the accounting manager for Sentinel was actually a U.S. entity called Beecher Carlson. And UBS and Latham did a significant amount of discovery with respect to those entities, both depositions and documents, many of which we've seen, one of which you alluded to today which we didn't know about prior to that, which is this indemnification agreement from June 2020.

And by the way, that indemnification agreement has been used. Sentinel paid Baker & McKenzie fees, Sentinel paid Ross & Smith fees, from what we've seen and what we've seen in the depositions. I think it was prior to the indemnification, there's hundreds of thousands of dollars of hit to the policy from personal expenses of Scott Ellington postpetition run through Sentinel.

So we learned about the indemnification. We learned about the payments. We learned about more of the transfers. We learned about attempts during the case to move assets out of Sentinel, calling them worthless. And it became very clear that this was a really organized, orchestrated attempt to hide these assets from the estate and prevent Highland as the Debtor from controlling a CDO Fund asset that really would

have changed the dynamic of the case completely. We wouldn't have been spending tens of millions of dollars fighting with UBS, thousands of hours fighting with UBS, if we could have used an insurance policy or the assets to help arrange a settlement.

Q There was a suggestion early on after this adversary proceeding was commenced, I think it was in the context of a motion to quash, that maybe this is a friendly litigation and it's not really adversarial. Do you have a view as to whether or not this has been an arm's length adversary proceeding?

A Everything with UBS and with Latham & Watkins is very arm's length. This is a pretty aggressive group. And I say that respectfully. I don't say that in a negative way at all. It's been that way from the start. And even in this litigation post our settlement with UBS, we have a number of material disputes regarding costs, regarding the breadth of the depositions and the discovery they want from us. They're pretty exhaustive. And we have worked through a number of those disputes, but it has not been easy. It's certainly arm's length.

Q All right. Finally, Mr. Seery, why are we making this or why is the Reorganized Debtor making this motion now?

A We have spent a tremendous amount of time and money on disputes with UBS, both prior to settlement and with respect to this lawsuit. From what we see now -- and I'm sure we

don't know everything; we continue to do work -- there is no benefit to the estate, the reorganized entity, from continuing to fight this dispute. I don't think we have a good faith basis to do so.

And to the extent that the injunction, a permanent injunction subsequent -- subject to a resolution can help finally resolve the issues with Sentinel -- as you mentioned, Mr. Morris, the directors at Sentinel are new directors. There has -- we've spent a lot of time working with the parties with respect to our claims from CDO Fund under the policy, a mediation in that action as well. And if that resolution can get done, that'll be of benefit to Highland and all of the respective parties.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: All right. Mr. Clubok, any questions?

MR. CLUBOK: A very brief follow-up, Your Honor, just to clarify a couple of points.

THE COURT: Okay.

MR. CLUBOK: May I proceed?

THE COURT: You may

MR. CLUBOK: Okay.

CROSS-EXAMINATION

BY MR. CLUBOK:

Q Mr. Seery, I want to take you back to the document requests that UBS made once we had gotten to the point where

you had made it clear to both UBS and to your team that you were going to provide whatever information you had.

A This was around the summer of 2020, prior to the mediation, or as we were going through the mediation?

Q Exactly.

A Okay.

Q Exactly. Okay. And just to orient you, I would like to put up what we've marked as Exhibit 57. Exhibit 57 was not previously marked explicitly, but it is a deposition exhibit. You'll recognize it, Mr. Seery and Mr. Morris. It was Deposition Exhibit 69 to your deposition, Mr. Seery. And we'd like to mark it, for the purpose of this hearing, Exhibit 57. This was UBS's first request for production of documents to Debtor Highland Capital Management, which is I think what you're referring to. Do you recognize that document?

A I do, yes.

Q Okay. And I'm going to specifically turn your attention to Request No. 8. Request No. 8 asked for all documents pertaining to the assets and liabilities of HFP, CDO Fund, and SOHC, including but not limited to -- and then there's a number of subparts. Do you see that?

A Yes.

Q And if we can turn -- and, actually, in the very first one, A, you can see it talks about consolidating standalone financial statements from December 2007 through December 2019,

or the most recent period available. Do you see that?
A Yes.
Q And there's a number of other requests, but --
THE COURT: Mr. Clubok, let me interrupt a minute. Do you have an exhibit up on the screen? I am not seeing it. But I can pull it up off the docket if you tell me again which one it is.
MR. CLUBOK: I'm sorry. Exhibit 57. It's showing up on my screen. Ms. George has put it up. Does it not show up on your screen, Your Honor? Oh.
THE COURT: No. Do you know what -- just a moment.
(Pause.)
MR. CLUBOK: If I may, Mr. Morris, can you see it?
THE COURT: Okay. Yes. We're -- the court reporter informs me we have --
MR. MORRIS: I can.
THE COURT: -- something frozen on -- where we're supposed to get the document. She's called IT. But I can pull it up on the ECF, I hope. So, you said 57? No?
MR. CLUBOK: Well, unfortunately, Your Honor, this is the one exhibit that we didn't explicitly mark in our amended 179. It is referred to because it was an exhibit to the deposition of Mr. Seery.
THE COURT: Okay.
MR. CLUBOK: So we didn't individually mark this one.

So I'll just narrate it. I don't think you need to see it.

THE COURT: Okay. Okay.

MR. CLUBOK: You can confirm later.

THE COURT: Okay.

MR. CLUBOK: It is -- Exhibit 57 is the -- is UBS's first request for production of documents to Debtor Highland Capital Management. And it is a series of requests -- I'm sorry, is the first official request, or I should say the first document request, but I think even before this we had exchanged information requests as well.

BY MR. CLUBOK:

Q Is that correct, Mr. Seery?

A That's correct. Do you recall the date on this document, Mr. Clubok?

Q This particular document is dated September 28, 2020. So this would have been the formal document request that encapsulated our discussions that were either communicated more informally or as information requests.

A That's my recollection. I think this would have been during the mediation. I think the first session had already happened, and there was discussion informally or during the mediation that this would have been a document request. My recollection is it's more from UBS to more formally crystallize requests that had been made during the mediation -- during and before the mediation.

Q All right.

MR. CLUBOK: And by the way, Your Honor, I do see that this is Bankruptcy Docket 1345, I believe, if that's helpful.

THE COURT: Okay. Could you repeat the number again?

MR. CLUBOK: 1345.

THE COURT: Okay.

BY MR. CLUBOK:

Q Mr. Seery, I just want to -- I want to direct your attention to, in particular, Subparts I and J. And this, in Subpart I, if we can hopefully get it on the screen, but if not I'll read it, it asks for a monthly roll-forward of the itemized asset listing and corresponding values requested above from December 31, 2007 through August 31, 2020 or the most recent period available. Here we go. And we now have it on the screen, hopefully, and I just read part of Subpart I. Up on the screen.

Also, Subpart J asked for all activity associated with the itemized assets requested in Items H and I. For each one, a transaction listing of all related parties or affiliated transactions, including date and amount of transaction, et cetera.

Do you see that?

A Yes.

Q In a nutshell, these requests and the prior requests that

we had been discussing for the months leading up to that, in sum and substance is it fair to say that you understood that what UBS was looking for was the complete financial picture of the assets that these funds -- namely, HFP, CDO, and SOHC -- had from the time of the original dispute through the present?

A Yeah. I think that's fair.

Q And that was, in fact, very clear to you, that that's what UBS was asking for in a paraphrased nutshell?

A Yes.

Q Okay. And it's true that you tasked your in-house legal team with coming up with a substantive -- or, identifying the information that could form the response to these requests?

A Yeah, that's true, with -- with outside counsel as well.

Q Right. But you in particular tasked Mr. Leventon and Mr. Ellington in the first instance for identifying that information to provide to your outside counsel to be provided to UBS, correct?

A Yeah. I think that's fair. They were working together, though. It was going to be -- Ellington and Leventon had access to the systems and the ability to get the information. How to present it and making sure that it was compliant with discovery requests would have been more of an outside counsel task.

Q Now, prior to getting these requests, even, or maybe when you initially got these requests, Mr. Ellington and Leventon

had advised you, in words or substance -- I'm not quoting them, but I want to get the gist of what they said -- that, in fact, these entities had lost all of their value during the financial crisis of 2008 and the years thereafter, correct?

A That's correct.

Q And they told you that these entities had basically no remaining value at all, no assets left at all. Correct?

A That's correct. Even more than that, initially, these were described to us as shell entities. The only assets they would have had were assets that were moving in and out of the UBS warehouse. So it was -- they weren't going to be entities that ever were, as described to us, asset -- entities that held any sort of material assets at all.

And then subsequent to the financial crisis, the information they gave us was that there was no -- there was no -- there were no assets there.

Q Yes. It wasn't just that there was a net negative value; it was that there were no assets at all, supposedly. Correct?

A Correct.

Q And yet when UBS pressed harder for information about assets, eventually Mr. Leventon started to disclose that in fact there were at least some assets in these entities, and specifically CDO Fund. Correct?

A That's correct. As I mentioned earlier, he showed us a spreadsheet with expenditures, millions of dollars of

expenditures for legal fees, which was surprising based upon the fact that if these -- the prior statements that these assets had no value, or these entities had no value, how, then, did they have cash to spend millions of dollars on legal fees?

Q But even when he -- and by the way, it came as a surprise to you to learn that, in fact, instead of zero assets, there were at least some assets remaining, correct?

A That's correct.

Q And then even when Mr. Ellington disclosed that additional information, he never disclosed anything about the hundreds of millions of face value in assets that had been transferred out of these funds just a few years prior. Correct?

A That's right. Yes. It was never disclosed to either me or my independent -- fellow independent board members, or, to my knowledge, to counsel or outside consultants.

Q Okay. Mr. Seery, I just want to end with a clarification of your role and why this injunction is proper. It's correct to say that Highland is the portfolio manager of an entity we've been calling Multi-Strat, correct?

A That's correct. I'm not sure if under the docs it's called portfolio manager or collateral manager, but Highland is that entity, yes.

Q And as the CEO, you are responsible for directing the efforts of Highland with respect to its role as the manager of

Multi-Strat, correct?
A That's correct, yes.
Q And just -- I think the Court has heard these names below -- the entity that we're calling Multi-Strat has also been called Credit Opportunities in the past? That's interchangeable for purposes of this proceeding; is that correct?
A Yeah. But there's a number of different Credit Opportunity-type funds that Highland has had over the years, but you'll see that in a number of the documents before the name was changed to Multi-Strat.
Q Okay. And with respect to CDO Fund, it is fair to say that Highland Capital Management had control of CDO Fund as a director and as a direct owner of the CDO Funds through its general partner, correct?
A Yeah, through the general partner interest, yes. So, Highland owns CDO Funds GP, which can direct CDO Fund. I believe we had LP units as well, but there were also third-party limited partners in that entity pre-financial crisis.
Q And with respect to Multi-Strat, in addition to acting as Multi-Strat's investment manager, Highland Capital also is the indirect hundred-percent owner of Multi-Strat's general partner as well, correct?
A Of the GP, that's correct, and we own about roughly 55 to 60 percent of the LP interests.

Q And finally, Mr. Seery, you knows there's a TRO or temporary restraining order already issued by the Court in connection with this proceeding?

A Yes. And we've adhered to that order.

Q But absent having that order, you would have had -- you would have felt obligated previously to transfer funds that are currently being restrained by this order, correct?

A That's correct. Our perspective of the documents and the role of the collateral manager is that, at least with respect to Multi-Strat, but also with respect to funds that we turn over to trustees on certain CLOs, which then flow to -- could flow to Sentinel without the TRO, those would have flowed, those funds.

Q Okay. Thank you, Mr. Seery.

MR. CLUBOK: I have nothing further.

THE COURT: All right.

MR. MORRIS: No redirect, Your Honor.

THE COURT: Okay. Then I have a couple of questions.

EXAMINATION BY THE COURT

THE COURT: I just want to make sure I understand the relevance of this line of questioning about Multi-Strat. I remember Multi-Strat. There was an adversary proceeding that I just had in front of me last week, a motion to dismiss. So I remember what it is. It was a fund that, among other things, or maybe it mainly owned the viaticals. But I'm

trying to understand the significance of Multi-Strat to these two funds we're talking about right now.

THE WITNESS: So, I'll be happy to walk you through, Your Honor. Multi-Strat, when the case started, owned certain life policies.

THE COURT: Right.

THE WITNESS: It owned some other assets as well, and it owned a lot of MGM. The life policies -- and it's not fair to call them a portfolio. They are -- they were eleven policies on eight lives. When the case started, the premiums on those policies were substantial, and we didn't have the funds to make payments. Multi-Strat didn't, and Highland didn't, with the Committee's involvement, other than an initial payment and to keep the policies alive, didn't have the funds to invest in Multi-Strat.

So Multi-Strat ran an auction and sold those policies above the market value. So it was a full, open auction, it was a successful auction, and it was sold for more than the values that had been maintained by Highland prior to the filing.

As an aside, or there's two asides, one is part of the reason you had to get rid of the -- or sell the Multi-Strat policies was that they were security for a loan to NexBank. And so that loan had to get paid off to free up value to Multi-Strat. Multi-Strat is a separate fund that Highland

manages that, in addition, fast forward, no one -- there hasn't been an event on those policies since we sold them in the first quarter of 2020. That means no one passed away up until at least a month or so ago, and premiums would have been in excess of $22 million by now, which Multi-Strat didn't have. So that's the life policy part of that.

In addition, as I said, Multi-Strat owned other assets, including MGM. Also, some of that was secured or provide security to NexBank for a loan that Multi-Strat had taken out previously.

The reason Multi-Strat took out a loan, my recollection is, a number of investors in Multi-Strat had tried to redeem. Most of those were offshore investors in either Australia or Japan, and basically Highland told them, Thanks for your redemption, but we're not paying you. We're not closing the fund down. And the documents allowed those redeemed interests to sit out there, and they basically functioned like non-cumulative preferred, meaning they didn't increase in interest rate but they had a fixed claim.

Amongst those redeemers was Sentinel. And so when we learned about the Sentinel involvement, we didn't really know who Sentinel was, one of our outside advisors said, They're one of the redeemers in Multi-Strat. That got us looking even further.

But Multi-Strat's involvement in this litigation, or the

UBS litigation, relates to some fraudulent conveyances that UBS alleged that happened back in 2009, 2008-2009, where Multi-Strat and other funds were making contributions in to try to support the UBS transaction from the Highland perspective, and then when it looked like that transaction wasn't going to work out, a bunch of those assets went back out.

There was a so-called -- it was very oddly named -- but basically a note transaction. A bunch of assets went in, Multi-Strat and other entities got a note, and then there was basically -- I forget what they called it, but it wasn't a -- they didn't call it satisfaction. It was basically they ripped up the trade and gave the assets back. And UBS had issues with that.

So when we sold the life policies, it was actually very difficult, because one of the buying entities had done their diligence and they saw that UBS had a claim against Multi-Strat, and unless we could get a stipulation with UBS we weren't going to be able to sell those policies. If we weren't able to sell those policies, we didn't have the money to pay the premiums, they would have expired worthless. So we cut an initial deal with UBS.

So they -- they've been in and around the Multi-Strat for 14 years. And ultimately Multi-Strat settled with UBS for $18-1/2 million. That was in the original UBS settlement.

THE COURT: Okay.

THE WITNESS: When we learned of all the Sentinel issues and these transfers, UBS took the position that we should start over and we took the position that, no, based on what we see, we've -- Multi-Strat has settled, but these other allegations relate more to Highland liability, CDO and SOHC liability, not to Multi-Strat liability.

So that $18-1/2 million piece didn't change. The extra $50 million in claims was just claims against Highland, not against Multi-Strat. And Multi-Strat has subsequently settled its issues with UBS by paying the $18-1/2 million. It had previously sold the life policies, freeing up the liens from NexBank and paid off NexBank. And it subsequently made distributions and redeemed all of the redeemers save Sentinel. That money is set aside because of the TRO.

And some day there will be more about Multi-Strat and the attempts to, according to the Multi-Strat investors, rip them off for their interests, redeemed interests. And we do have signed documents evidencing that. But we'll get to that another day.

THE COURT: All right.

MR. MORRIS: Your Honor, if I may, can I just ask a --

THE COURT: Go ahead.

MR. MORRIS: -- question or two, a follow-up

question?

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, just to make this clean, does Sentinel have a redemption interest in Multi-Strat?

A Yes.

Q And does Highland control Multi-Strat?

A Yes.

Q And is the TRO or now the permanent injunction designed to prevent Highland from paying anything to Sentinel on account of its redemption interest?

A That's my understanding, yes.

Q Okay.

MR. MORRIS: Your Honor, does that clear it up for you?

THE COURT: It does. And I think probably some of this was explained to me way back when I --

MR. MORRIS: Yeah.

THE COURT: -- was presented with the 9019 settlement with UBS. But, shockingly, I'm a little -- I was a little fuzzy on the Multi-Strat part of that.

MR. MORRIS: There's a lot.

THE COURT: Mr. Seery, --

MR. CLUBOK: Your Honor, may I ask just one -- may I ask just one follow-up question, just to tie this up in a bow,

to make it extra clear? There's one other element to this --

THE COURT: All --

MR. CLUBOK: -- that I just want to make sure is clean.

THE COURT: All right. You may.

RECROSS-EXAMINATION

BY MR. CLUBOK:

Q And Mr. Seery, that redemption interest that is currently on the books as being in favor of Sentinel, that is one of the assets that was transferred by CDO Fund to purportedly buy this so-called insurance policy, correct?

A Part of that is. It has multiple parts. It's all covered in the memorandum of understanding. But the big piece of it is, yes.

Q Thank you.

THE COURT: All right. And another loose end I want to tie up.

EXAMINATION BY THE COURT

THE COURT: I just want to be clear on the $100 million of market value of transferred assets. I think I heard that they were not all transferred in August 2017. There had even been some transfer of value postpetition. Is that correct?

THE WITNESS: So, the transaction was structured so that all of the assets would transfer in 2017. The value --

the face amount of those is north of $300 million. The fair market value, according to a Highland tax memorandum, we didn't value it in 2 -- as of -- we didn't retroactively look back and try to put a value on it. But according to a Highland tax memorandum written by one Shawn Raver, is north of $100 million.

The -- all of the assets didn't -- didn't effectively transfer. It looks like certificates were lost in transit, which just doesn't happen very often, but in this case it seems to. So some of the assets didn't transfer.

So, pre- and postpetition, while that was going on, Highland employees were advising the trustees for those assets -- these are Highland-managed CLOs where there's a trustee in place, and the assets are preferred shares in the CLOs -- when those preferred shares were due cash, they would go to the trustee. The trustee would see that CDO Fund still owned the asset because the transfer didn't make it all the way to Sentinel, and the trustee would deposit those into a CDO Fund account. Highland employees were directing that those pre- and some postpetition, that those assets -- those accounts be swept to Sentinel.

MR. MORRIS: Your Honor, if I may, I think that -- Mr. Clubok, it would be helpful here. I think some of the documents that they have admitted into evidence relates to these postpetition transfers. So Mr. Seery can correct me if

I'm wrong -- and I'll call this argument -- that there are certain assets, including Greenbrier, that didn't make their way, even though they were intended to make their way to Sentinel, did not because their certificates were lost. And as, you know, that assets and any other that didn't actually make its way as intended, as they generated income, it was the income and other dividends or distributions that those interests received that were then transferred to Sentinel. Do I have that right, Mr. Seery?

THE WITNESS: Yes, you have. That's correct.

MR. MORRIS: Yeah.

THE COURT: Okay. That's all the follow-up I had. Anything else of Mr. Seery?

MR. MORRIS: No, Your Honor. Highland at this point rests.

THE COURT: Okay. Thank you, Mr. Seery.

MR. MORRIS: I'll turn the podium over to Mr. Clubok. Yeah.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

(The witness is excused.)

THE COURT: Mr. Clubok, any more evidence from UBS?

MR. CLUBOK: Yes, Your Honor. We do have evidence. This is where we have probably a good 45 minutes. I don't know if you want to take a break or if you want me to just

launch into it.

THE COURT: Oh, okay. I appreciate getting that time estimate. We will go ahead and take -- let's make it a 10-minute break, please.

THE CLERK: All rise.

(A recess ensued from 11:18 a.m. until 11:31 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Thank you. We're back on the record in UBS v. Highland, Adversary 21-3020. Mr. Clubok, are you ready to proceed?

(No response.)

THE COURT: All right. You must be on mute.

MR. CLUBOK: Sorry. Thank you.

THE COURT: Okay. Gotcha.

MR. CLUBOK: Your Honor, can you see the title page of the presentation we're about to walk through?

THE COURT: I can. Thank you.

MR. CLUBOK: Terrific. Okay. I will be -- you know, again, for efficiency's sake, we can call the first few minutes the opening, if you'd like. But really I just want to get right to presenting the evidence for our part of this proceeding.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. CLUBOK: Your Honor, again, Andrew Clubok, Latham & Watkins, on behalf of UBS.

Your Honor, we start with how did we get here. And you've heard this before. But UBS had a $1 billion judgment. And very specifically, the judgment that I spent so much time that Mr. Seery has alluded to that really was the impetus of a lot of discovery initially was specifically against two entities, approximately 50 percent to each. About $531 million, the judgments against Defendant Highland CDO Opportunity Master Fund, which we've often shorthanded as CDO Fund, and about $510 million against Defendant Highland Special Opportunities Holding Company, which we often call SOHC.

These judgments were the product of a so-called Phase I of the New York litigation that UBS instituted back in 2009 against Highland Capital Management and some of these other funds.

Phase II was supposed to take on Highland Capital Management and the other Defendants' liabilities, but restructuring intervened, and as a result those proceedings were stayed and Your Honor knows the rest.

We have, as Your Honor knows, settled with most of the Defendants, but there was one important Defendant remaining, and that was the parent company of Highland Special Opportunities Holdco. That SOHC is a hundred-percent subsidiary of Highland Financial Partners.

And just recently, after a damages inquest and other proceedings in New York -- well, this was the total judgment,

the $1.042 [billion] that Your Honor is familiar with, before additional interest -- but recently we obtained a judgment in the so-called Phase II portion of what remains in New York, and amongst other judgments, most importantly for the purpose of today, is that we have now obtained a judgment against Highland Financial Partners as an alter ego of the Defendant SOHC. So HFP is responsible for that same $510 million, plus additional interest.

And I'm getting a request to annotate, but I guess I have to hit approve, too. Which is fine with me.

In any event, the HFP alter ego judgment is now also completed.

As was well known, and you'll see that, in particular, Mr. Dondero, Mr. Ellington, and their associates all have anticipated for years that one day SOC's liabilities, SOHC's liabilities, would also be HFP's liabilities, as they now officially are.

Sorry. I've got this request to annotate that has created some curious issues here.

(Pause.)

MR. CLUBOK: A moment, Your Honor.

(Pause.)

MR. CLUBOK: Well, unfortunately, I -- someone asked me if I could annotate. I'm going to try to annotate. Okay. There we go.

In any event, we start with the judgments. Then the next thing to know about, as you've heard a little bit, is there was this so-called ATE, or after-the-event policy. And Exhibit 1 is a copy of this so-called policy. As you can see, the insurer is Sentinel Reinsurance. The legal action that this policy was aimed at, the only one identified in the policy, is the New York action, the *UBS Securities v. Highland Capital Management* and others. The limit of indemnity was intended to be $100 million. And the premium was identified as $25 million.

Well, Your Honor, you heard a lot about how the ultimate consideration for this policy exceeded even the coverage limits of $100 million. But, of course, that's -- you don't pay for an insurance policy with the coverage limits, you pay for it with a premium, and this premium was supposedly set at $25 million. So the transfer of assets, which you've heard already testimony exceeded $100 million and had a face value of $300 million, far exceeded the so-called premium limit. And, of course, exceeded the limit of indemnity itself.

The policy is fairly straightforward, fairly simple. It said that the insurer agrees to indemnify the insured in respect to any legal liability occurring during the period of insurance, up to and including but not exceeding the limit of indemnity, provided that either the Court or any Appellate Court makes an order of liability relating to the legal action

that's insured. Notably, also if there was a settlement would be another way that the policy would be triggered.

As you've seen, this policy was signed by James Dondero in his -- what has become the typical fashion that we've seen in which he signs on behalf of every relevant Highland-related entity. Here, he signs for all the insureds, which are identified as CDO Opportunity Master Fund, Highland CDO Holding Company, which we'll come back to, and then Highland Special Opportunities Holding Company.

At the same time, there was an asset transfer, a so-called purchase agreement whereby all of these funds, and other funds at Highland, pooled their assets and transferred them all to Sentinel, supposedly so that Sentinel could purchase them, so that in turn these Highland funds could then pay the supposed $25 million premium.

And then the premium, as set forth in Exhibit 2, was agreed to be all of the assets listed in Schedule A hereto as a hundred percent payment of the premium. And Schedule A, which you saw briefly during Mr. Morris's presentation, identified every single asset from CDO Fund, from SOHC, from HFP, and also from some other entities that we'll talk more about in a moment.

One thing of note of these assets, and I'll just point out because Your Honor asked about it, is that there is the so-called Multi-Strat asset. Remember, Multi-Strat was then

called Credit Opportunities CDO Limited Partnership Interest. You can see that CDO Fund, this is the Highland CDO Opportunity Master Fund asset, so CDO Fund, which is the entity -- one of the entities that we have over a half-billion-dollar judgment directly against now, had this interest in what was then called Credit Opportunities but is now known as Multi-Strat. That is the interest that is now currently the subject of the restraining order, and had not the restraining order entered, those monies would have already, as Mr. Seery testified, been distributed on to Sentinel.

Just like with the insurance policy, with the asset transfer agreement, Mr. Dondero just signs on behalf of everybody. You will see all the transferors he signs on behalf of.

It turns out, or as known from the get-go, that this was a massive overpayment. Remember, the aggregate purchase price paid by Sentinel for these assets was $25 million. That was what the premium supposedly was set for -- was set as at the outset.

At this time, and this is according to a tax memo that Shawn Raver wrote, you know, about a year later when he's trying to evaluate the tax consequences of the Sentinel acquisition of -- notably of HFP/CDO Opportunity Assets, you'll note even internally they describe this not as SOHC and

CDO Fund assets but as HFP CDO Fund assets. This is when they were challenging alter ego at that time, and they continued to challenge alter ego right up until we got the judgment. But you can see that internally they certainly treated it as an HFP liability, not an SOHC liability.

In any event, you'll note that the purchase price for the assets was $25 million, but the aggregate fair market value of the assets on the date of the transaction was $105 million and change. So, from the get go, they're paying, you know, more than quadruple the premium price, and more even than the limits of coverage.

As you noted, as Mr. Seery testified already, this was from his deposition, we're here because Highland Capital Management controls Multi-Strat in two ways, both as indirect hundred-percent owner, also as investment manager, and also controlled CDO Fund.

And then we're here because Your Honor, having entered a TRO, otherwise it may have already been too late to stop a lot of this.

So, what now? What now is that UBS asks for what it's always asked for, is an ultimate -- a permanent injunction. And we set forth in our response to this motion -- and, really, this is what we've asked for from the get go -- this requires a slightly different form of order than what Highland submitted, but I hope that after they hear the rest of this

evidence they will agree that our form of order is appropriate.

By permanent, as you can see in our order, it means not permanent for the rest of time, but permanent until either a court adjudication of what actually happened here or a settlement agreement. And we now hope that the latter will be what triggers it, at least for the assets that we now know about.

So, what are the factors? Obviously, success on the merits. Irreparable injury. Weighing of harms. And the public interest. And these are the familiar factors recently articulated in the *Environmental Texas Citizen Lobby* case from the Fifth Circuit, 824 F.3d 507.

So, let's talk about success on the merits. Why will UBS win? Not just likely to, but will win on the merits if we proceed?

There's really two ways for UBS to prevail here. You could look at it either way. Either the policy was just pure fraud and everything needs to be unwound. Or the policy was valid, valid, but there was about an $80 million (indecipherable) overpayment. In other words, it may well be fair that a $25 million ATE policy could have purchased a $100 million -- a $100 million after-the-event coverage at that time. As we've seen, they didn't pay $25 million. They paid $105 million.

So these are two different theories that both result in effectively the same place.

Now, we're not claiming simply constructive fraud, or we wouldn't be claiming simply constructive fraud at the end of the day. This is -- this goes into actual fraud. And as a result, we're going to go through the factors, the so-called badges of fraud. And these badges are from New York precedent. And they are from the *Matter of Gard Enter. v. Block*, most recently articulated, 2012 N.Y. Misc. LEXIS 4175. But they very much overlap with the badges of actual fraud that Texas and the Fifth Circuit have identified very recently in the *Matter of Alabama & Dunlavy*, 983 F.3d 766. That's a Fifth Circuit 2020 case.

These particular ones that we have on the screen on Slide 12 are the actual ones identified from -- by New York, and we think New York law applies because the fraud was conducted through the Bank of New York and was directed at the New York proceedings. However, you could also argue that Texas law applies because clearly the continuing fraud that continued even after the restructuring has affected this bankruptcy.

So, under either way of looking at it -- and normally you don't need to, of course, show each one of these; you show some of these -- you'll see that literally every one of these, and every one to the extent it's slightly articulated differently in Texas, have all been demonstrated by the

evidence that we've obtained. So we're going to briefly walk through those.

We begin with knowledge of the claim. This is obvious. That the timing -- and by the way, a lot of these factors overlap, because it's like one factor is whether you had knowledge of a claim in anticipation of a transfer. Another is suspicious timing of a transfer. So some of these, as you can see, overlap.

But certainly knowledge of the claim. In March of 2017, UBS had defeated all or virtually all of Highland and the Funds' arguments on summary judgments. And they had a host of supposed defenses on liability that they claimed they were going to win on summary judgment. They were, I believe, all or virtually all overruled. That ultimately was appealed, and in New York you can take interlocutory appeals much more liberally than other jurisdictions, so they were able to delay the trial for another year through interlocutory appeal of the denial of summary judgments.

This is the world they were facing in March of 2017. In a very thorough opinion, Justice Friedman and the Supreme Court of New York had overruled their -- rejected their summary judgment claims.

So remember that date, March -- that's March 2017.

So we asked Mr. Leventon, let's start with liability and then we'll talk about damages. Did you ever give a

recommendation that UBS was likely to win on its breach of contract claim against CDO Fund and SOHC in Phase I?

Answer, Yes, I did.

Question, What was that recommendation?

Answer, That liability was likely to be found.

Question, Who did you make that to?

Answer, I don't recall. It certainly would have been -- well, I don't recall who it was.

Question, You said certainly would have been.

And then he answered, No, I believe it probably was Mr. Ellington and Mr. Dondero.

Later in his deposition he was asked, How many times did you have discussions with Mr. Dondero in which you expressed your view that liability was likely to be determined against CDO Fund and SOHC? He claimed he didn't recall. And then he said, Well, it would have been more than one and probably less than five.

Likewise, Mr. Ellington testified. We asked him, You said a number of times that it didn't surprise you at all about the size or the magnitude of the damages verdict, correct?

He answered, Correct.

Question, And you had warned Mr. Dondero, in words or substance, that this was likely to occur before the verdict came, correct?

Answer, Yes.

So, not only did they obviously know about the claim, but they had, you know, the individuals, Mr. Ellington and Mr. Leventon, who were tasked with responding to the claim and running the litigation in-house, had formed opinions about the likely loss and had shared those with each other and certainly with Mr. Dondero.

In the course of purchasing this after-event, you know, so-called after-the-event policy, they were asked by Beecher Carlson -- you're going to find out that Beecher Carlson is the managing -- insurance managing agent for Sentinel. And they were asked at some point, well, you know, what's up with these claims? Or can you give us an analysis of them? And there's an email exchange between Mr. Leventon and then Mr. Sevilla, who at the time was another former assistant general counsel in the Highland legal department. And in that exchange, which they prepared to be able to send on to Sentinel's representative, Mr. Leventon notes, The claims against CDO Fund and HFP and affiliates are very strong. They are guaranty claims. The Defendants' primary responsibility will be to contest the amount of damages.

And they note that it's $686 million at that time from February of 2009, accumulating interest. And obviously the billion-dollar judgment, much of it is interest. And they noted how CDO Fund was a guarantor of 49 percent. And, again, by the way, HFP/Affiliates are 51 percent guarantors.

At this time, they were insisting, demanding, putting on evidence in court that supposedly HFP and SOHC were not at all alter egos, that they were not related, they shouldn't be treated as one. But internally, when they wanted to pool the assets of HFP and SOHC to purchase this so-called policy, and then when they wanted to justify it to Beecher, they're always talking about it as if -- as if it's HFP, as one unified alter ego.

So that's just a -- one of the many sort of side let's just say issues that are uncovered by this whole series of events.

In any event, that's our main story. At that point, and the next thing to see or badge of fraud is the transferor's inability to pay.

Well, at this time, these funds, the HFP and CDO Funds, who are the main Defendants, HFP through its alter ego, SOHC, at that time, were insolvent. And they were insolvent -- at least, they had declared to their investors they were insolvent back in 2009. And check -- and look at this. This is the HFP letter that went to its investors in 2009: Due to events and circumstances described in this letter, we've concluded that as of December 31, 2008, it's likely that all future inflows of cash to HFP will be used to pay creditors and there is no prospect of return to holders of HFP.

So, first of all, they're telling their holders of HFP,

hey, all we've got left are creditors. And by the way, other documents, and we've submitted them into the record (indecipherable) and they're talked about in the depositions, the only major creditor left is UBS. If UBS's claim had really been denied or if they had prevailed, HFP would have actually finished in the black, not in the red.

So they're telling their investors, hey, we can't pay you, we're insolvent because we have this giant claim to UBS. Of course, they've never paid a single penny to UBS. HFP has not directly.

Meanwhile, CDO Fund, the same thing. They're telling their investors, yes, we're also insolvent. And explained to their investors, of, look, all of the Fund's available assets will be distributed to the Fund's remaining (indecipherable) and counterparties and other senior and trade creditors in an orderly liquidation.

Of course, that doesn't happen. None of CDO Funds -- and you've seen the CDO Funds that were belatedly identified to Mr. Seery in 2020, and you've also seen that lengthy list of funds or assets that CDO Fund had back in 2017. They obviously had this post-2009. They have told their investors, hey, everything we've got left is going to be distributed to our creditors, but instead we know now that they've funneled it to Mr. Dondero and Mr. Ellington's Cayman entity.

Another badge of fraud. Suspicious timing in anticipation

of litigation. This plan was all hatched -- remember, March '17 is when they lost summary judgment. This plan is hatched just a few weeks later, in April of '17. And this is the so-called settlement analysis that sort of lays out the scheme. And this is a document that I believe was prepared by Mr. Leventon and Ms. Vitiello, at Mr. Ellington's direction, I believe. And it's Exhibit 7 in the record.

And it notes -- this is why they were trying to justify why they should do this ATE policy. And they say, well, if UBS wins, Highland is going to lose all the assets again in HFP and CDO Fund.

And by the way, of particular note, the one asset they made particular note of: HFP assets include a $32 million DAF note payable. Put a pin in that. And remember, why are they so intently concerned? Of all the $300 million of face value assets, the one that gets particular attention in this presentation is a $32 million DAF note payable.

That note, by the way, we now have come to learn, is an entity which Your Honor is familiar with, I think it's been called CLO Holdco or CLO entity, and it's also known as the DAF. That note was owed to CDO Fund because of a prior transfer, probab... you know, of -- or I do know that we're -- I'm sure we'll dig into. And so they're holding this $32 million note that the DAF owes them, and they note that, if Highland doesn't settle, Highland is going to lose all the

assets, including that particular $32 million DAF note.

It's also noted that Highland will face years of fraudulent transfer claims through the Highland structure, and HCMLP will face clawback of $9 million and liability to backstop HFP CDO Fund for up to $1.2 billion.

This was the view of the legal department. Obviously, never shared with us during the litigation, but we've come to understand never shared with Mr. Seery or with Mr. Morris, right? Their team, right? This is -- this is all -- this document is uncovered after Mr. DiOrio is fired, after everyone is fired, I believe, related to this, and then they happen to find this document either on a desk or through that email search that you heard about.

Side note. If Highland were to win, you can see below, then it would show that HFP is solvent. That would have reduced -- reversed the tax write-off and would have perhaps exposed them to tax fraud or to at least a massive payment for prior taxes.

So, a lot going on here. But, again, let's get back to the direct impact on UBS and then, later, Highland.

So, this is the settlement analysis that was prepared to support this whole ATE scheme. And here's the structure that's laid out. Okay. And this is before the actuaries have gone to work. This is before they've put together the actual documents. This is April of 2017, when the scheme is first

hatched. And it says, Step 1. HFP -- once again, HFP, CDO Fund -- will buy a $100 million ATE policy from Sentinel. The ATE premium will be all assets in HFP CDO Fund.

It doesn't say, gee, we'll go find out what the premium is, or we'll go check with an actuary and see what it should be, or we'll price this thing out and find out what the likelihood is of buying such a helpful insurance policy at this time. Nope. It's just, The premium is going to be whatever assets are left that we can round up. That's the plan from the get go. And it's suspiciously timed right after summary judgment has been lost in anticipation of trial.

The close relationship amongst the parties who devised this plan. Mr. Ellington -- that's putting it mildly. Mr. Ellington is the one who devised the plan. Says the idea -- we asked him, Who had the idea? He said, I had that initial conversation with Mr. Leventon because it was my idea.

Question, It was your idea to have Sentinel issue an insurance policy with respect to the UBS litigation that was then pending in New York, correct?

Answer, Yes.

This is from Mr. Leventon's deposition transcript, 86:21 through 87:6, which has been marked and included as part of the designations for Mr. Ellington.

Mr. Leventon was then asked, Who made the decision to obtain the policy? So, Mr. Ellington had come up with the

idea, but of course, we all know who's the ultimate decider at Highland.

Mr. Leventon says, My understanding is that it was Mr. Dondero who made that decision.

What's that understanding based on?

That was communicated to him by Mr. Ellington.

When?

Back around the time, probably right after the policy was implemented.

Of course, there is a very close relationship, because Dondero and Ellington own several. This is Mr. Ellington. This is a -- this is an org chart for Sentinel. And you can see it was notarized -- this was produced to Sentinel back in -- or provided, I believe, to the regulators in the Caymans in January of 2018.

So this is the way things looked back at the end of '17 when these actions were taken. And you can see that Mr. Ellington has a 30 percent ownership interest in Sentinel, although he was only given a 9 percent vote. Mr. Dondero had a 70 percent ownership interest ultimately through a bunch of, you know, intermediary entities, but yet a 91 percent vote in how Sentinel would be operated.

And that's it. These are the two so-called UBOs or ultimate beneficial owners. Sometimes they're listed on org charts as UBO 1 and UBO 2. But UBO 1 and UBO 2 are simply Mr.

Ellington and Mr. Dondero, who collectively own a hundred percent of Sentinel.

Remember, this is the scheme. We're going to pool all of HFP and CDO Fund's assets, whatever they amount to, send them off to Sentinel, supposedly for this hundred-million-dollar ATE policy.

And this was Beecher Carlson. Again, it's Sentinel's insurance manager. He was deposed in these proceedings. And we asked, Was it common that employees of Highland Capital would do things on behalf of Sentinel? This goes, again, to whether there's a close relationship between HCM and Sentinel. Mr. Carlson -- or Mr. Adamczak, who is the representative, the corporate representative of Beecher Carlson, says, Well, a captive insurance company does not generally have any employees, so all of the employees are typically from a sponsoring organization. In this case, it was Highland Capital that was the sponsoring organization.

Now, when you look at the deposition transcripts, you can see that, one by one, the former Highland employees denied to various degrees their involvement with Sentinel. Meanwhile, though, Sentinel has no employees, and it was these Highland former employees who did everything for Sentinel while they were being paid by Highland.

But, again, this just -- for purposes of this factor, this just goes to the close relationship between HCM and Sentinel.

Obviously, Mr. Dondero, who ultimately controls HCM, also ultimately controlled Sentinel. You've got Mr. Ellington. And then you've got all of the Highland former employees doing the work of Sentinel.

Here is an example of each of the key figures who were at Highland who've now been fired. Mr. DiOrio. He was the former managing director of Sentinel, but he was also a Sentinel director. And that included right up until after even he was fired by Highland and finally tendered his resignation. But he was made a director in the wake of this transaction.

Mr. Sevilla. He was the former assistant general counsel at Highland. And he was described by Mr. DiOrio as the point person, I guess, for things that had to happen with Sentinel. He helped with the formation. He, as I understand it, he was part of the team. And he's also described as the point person by everybody except for Mr. Sevilla, who disavows the same kind of involvement that everyone else said he had and that the documents show he had.

Then you've got Mr. Leventon. He was another former assistant general counsel.

By the way, all these folks are in the legal department. They have fiduciary duties. They're all in the legal department, and they presumably have fiduciary duties throughout, and they're all, as you can see, right in the

thick of this.

Mr. -- the corporate representative of Beecher Carlson talked about how Mr. Leventon, each year-end, would work with Sentinel's actuaries to determine the scenarios for the outcome of the case -- he's talking about the UBS litigation -- with the end goal being to determine what the loss, ultimate loss would end up being that Sentinel would record in their financial statements.

So Mr. Leventon is working hand-in-glove with Sentinel from the time the policy is issued -- even before; you know, he was one of the drafters of that memo -- but certainly for years after, including after the restructuring. Of course, with never a word to Mr. Seery or his outside counsel.

And then you have Katie Irving. She was a former managing director. She's, again, one of these people who, in her deposition, tried to effectively say she really didn't have much to do with Sentinel. But at the Beecher deposition, they noted that she was someone who had been knowledgeable of all the activities centered around Sentinel, and she attended multiple meetings between Sentinel and CIMA, which is the regulatory authority in the Caymans. She had traveled to the Cayman Islands several times for these meetings, yet somehow it's all apparently slipped her mind when she was being examined or asked about this kind of information directly or indirectly by Mr. Seery and his team.

Back to the Beecher Carlson representative. In terms of the unusualness of the transaction, Beecher has lots of insurance companies that they help manage. We asked if they have any other clients that issue ATE policies. Answer is no. Sentinel is the only one.

Just how many ATE policies did Sentinel actually produce?

Just the one.

Just the one we're looking at here?

Correct.

So this is very outside the ordinary course of business. And here's why. At the time of the transaction -- this is the financials at the end of 2016. Remember, the transaction is summer of 2017. Things haven't changed much for Sentinel in those few months.

(Interruption.)

MR. CLUBOK: That's -- the total assets are $19 million. Okay?

A VOICE: Sorry. I didn't mean to get --

THE COURT: I'm sorry. Who's speaking?

MR. CLUBOK: Okay.

THE COURT: Who is that voice?

MR. MORRIS: I think that was one of ours, Chris, I think you went off mute.

THE COURT: Okay.

MR. CLUBOK: That's okay.

THE COURT: Continue.

MR. CLUBOK: That's fine. Back on Slide 30. Slide 30 is UBS Exhibit 9, and that's from Sentinel's financial statements year end of 2016. And you can see that as December 2016 Sentinel's total assets were only about $19 million. So how are they issuing a $100 million ATE policy in good faith?

Well, the only way to even try to justify it is if you get more than $100 million in transfers, which we know they ultimately did. But, again, this just shows how unusual and outside the ordinary course of business this whole transaction was, even for Sentinel, even if someone were to try to portray it as just a, you know, normal insurance company, just your everyday normal captive insurance company in Highland run by Mr. Dondero and Mr. Ellington.

You can see the total cash was only about $5.8 million. And of course, the policy doesn't -- isn't supposed to pay off the claim in cash and prizes. It's supposed to pay just cash. But they only had about less than $6 million on the balance sheet at the time.

Unusualness of the case, case, is another factor that indicates fraud. And of course, we asked -- this is the former chief accounting officer, Mr. Stoops. At Mr. Sevilla's instructions, did you transfer all the assets of the relevant funds?

Answer, Yes. That is my recollection.

And in that instruction, he wanted all funds or all assets transferred, regardless of the value of those assets?

Yes. That's right.

Mr. Ringheimer, who was the former management or manager of operations, I guess, is his title at Highland, he was asked, To the extent there's a transfer of all of the funds of a particular entity, would you say it was common while you were at Highland for Highland to transfer all of the assets out of a Highland entity?

Answer, I don't believe I -- so, I have seen funds wind down before, but I don't believe I've seen another transfer like this before.

Then we asked, Do you recall what the urgency was for executing a transfer that day?

Answer, I do not.

Never communicated to you why it was urgent?

Answer, If they did, I don't remember.

And remember, you've already heard testimony that it was done in such haste that some of the assets weren't even properly transferred.

Use of dummies. This is a -- you know, it's always hard to unpack how Highland -- entities. But if you look at Exhibit 1, you will note three insureds. CDO Fund and SOHC, which you would expect, but also, oddly, CDO Holding Company. When you look at the Defendants, though, you don't see CDO

Holding Company. That was not one of the Defendants in the litigation, and yet somehow they're becoming an insured pursuant to this policy. That's curious.

Meanwhile, who paid for the insurance? There are six entities who paid for the insurance, and three of them are the insureds. That's double-curious, right?

And so all of this just adds to the suspiciousness of this whole transaction.

So, what about the consideration? Well, obviously, you've heard a lot. It was inadequate. This was, going back to that settlement analysis that was done, you know, hastily a few weeks after summary judgment was lost, out there it was identified that HFP CDO Fund would send all their assets, and they said, parentheses, $94 million, as the ATE premium, and that would let them write a $100 million ATE policy for UBS liability. They had roughly estimated that there was about $94 million left between HFP and CDO Fund, and that would justify this $100 million policy.

Well, it turns out that the aggregate purchase price paid was actually $25 million. Okay? So the premium gets set at $25 million, for other curious reasons. And meanwhile, the aggregate fair market value of all the assets -- because the plan was always to transfer all the assets, regardless of the value -- turns out to be $105 million. So that original plan, transfer all the assets to get us $100 million, that never

changed, even though it turned out the assets were worth more than $100 million and the so-called premium had to be set at $25 million.

Now, the Cayman Islands Monetary Authority, CIMA, found this suspicious. And they asked about it. And here you'll see, they catch Sentinel in a complete lie. This is a report that was done May 19th, when they're saying -- they're asking for information about what happened here. And they say, Those changed with Licensee's governance could not explain the basis upon which the investments had been valued on or about August 20 -- August 1, 2017 for the purpose of premium settlement. And this is Page 78819, Bates label, that is, of UBS Exhibit 11. Sort of a question/answer. It's like CIMA will say, Well, here's the question we raised, and then they will say, Well, how did management respond? And this is how management responded when CIMA raised this question. They said, you know, basically, how'd you set the policy? How'd you set the premium? And management -- this is management's comments, was that, At the time the ATE policy was drafted, premium had been established at $25 million based on a pricing study conducted by Licensee's actuary.

So they told CIMA, Hey, no problem, we had an actuary set the price, and $25 million was the price. Let alone the overage of payment, but at least $25 million was supposedly the premium price pursuant to this actuary.

Well, CIMA didn't just take their word for it. They continued their investigation, and this is how CIMA in this report, Exhibit 11, responds to this management comment. They say, Well, on April 4, 2019, the Authority held a telephone interview with Mr. Jason Stubbs of Risk International, the Licensee's actuary. During the interview, Mr. Stubbs informed the Authority he was not involved in the determination of premium pricing for the Licensee to any extent at all.

It goes on to say, The Authority notes with concern that the management's assertion that the ATE policy premium of $25 million was established based on a pricing study conducted by the Licensee's actuary contradicts the actuary's position.

So the actuary is basically outing them for having just simply lied to CIMA.

But you still -- even all that is suspicious, but the problem is we know the assets were worth way more than $25 million. And by June of 2018, there was already questions being raised. And Mr. Adamczak at Beecher Carlson had written an email to J.P. Sevilla and Matt DiOrio, copied one of his colleagues, and he said, Look, the problem is the premium was only $25 million, creating a ding on the transaction. This is from Exhibit 12. Because there is no return of overpayment of premium, it gives rise to the question, is this an arm's length transaction?

This is the managing agent for Sentinel raising these

concerns.

So what do they do? They change -- they change the policy. And this is -- this is way after the fact. This ends up being in 2018. This is like June of 2018. Remember, this is about a year after the policy which was -- it was issued in 2017.

And what they do is they just say, you know what, let's just adjust the premium. Now let's say the premium is $68 million. Okay? And now let's say that the limit of indemnity is down to $91 million. Okay? Remember, previously, they had a fair market value of $105 million. They've now got the fair market value supposedly down to $68 million. P.S., because they're now treating that note from DAF as worthless, amongst other things.

But they say, Well, the premium is $68 million. We had said if it was a $25 million premium, we at Sentinel would have to take a gain on that difference. Well, what if we just after-the-fact changed the premium up to match exactly the supposed new fair market value, and then lower the limit of indemnity at the same time down to $91 million?

So they cook up this scheme, they do it. Of course, they forget to have the insureds sign it, which is, again, a series of, I would say, fully unusual transactions. And this is, you know, again, a year after. So they're just continuing to do things to dig deeper into this hole.

We asked Mr. Adamczak, Is this something you've done before in other policies, changed the premium to reflect assets transferred?

Answer, This is the first situation like this we've seen where there are assets that were taken in as opposed to cash.

And have you ever seen anything like it since?

I have not.

Beecher Carlson is a nationally renowned, you know, large entity that works with insurance companies, I believe, you know, all over the world, I think, but certainly they have many clients. They've never seen anything like this. And certainly it has never been done before by Sentinel.

So, again, this goes to how it's an unusual transaction, and also it goes to the fact that this is not just one mistake or one event but a whole series of things in a pattern.

By the way, he was asked, Did any one of the insureds actually agree with the policy premium increasing by three times without increasing the coverage amount?

He said, I'm not aware if that was presented to the insureds.

Now, we know that a couple of those individuals at Highland Capital Management were in the mix on this, but it was never formally presented, I guess, to the insureds. Somebody at Highland just said, Yeah, go ahead and do this.

Then, in 2019 -- and note, this is Exhibit 15, the date of

this is December 31, 2019, months after the bankruptcy in this case has opened. And then what happens? There's an asset transfer agreement because Sentinel had this collection of assets that they want to get out of even Sentinel and basically to transfer all these assets to another Dondero/ Ellington-affiliated entity -- I believe it was to Sebastian Clark, allegedly -- all of these assets for $3. That's in December of 2019.

Now, this is -- you know, they've already moved the assets from CDO Fund, HFP, and Sentinel in 2017. They disposed of some of them in other ways, but some they still have in the Caymans. And what they do is they hustle or try to hustle and get them out after the restructuring to an entity connected or owned by Ellington for $3.

You'll note that amongst these assets there's that $32 million CLO Holdco also known as the DAF note. Remember the one that they had so much emphasis on when they originally hatched the scheme, that they were really worried that this note could ultimately end up in the hands of UBS if UBS were to prevail? Well, they now try to double-transfer it away.

After, by the way -- here's another asset. Aberdeen. This is an interest in a CLO. We now know this is -- millions of dollars, I believe, are currently restrained in connection with this Aberdeen asset by the New York court. But, again, they're just transferring all these assets, supposedly for $3.

Why? Well, Mr. Adamczak said they were told they were worthless. And we asked, Who told you they were worthless? And he said, That direction would have come from Matt DiOrio. This is December of '19, after the bankruptcy.

Then we asked, Well, as part of the valuation service the Valuation and Research Corp. had done, had they determined these assets were worthless? Had this VRC group, this -- the group that previously they had used to try to give them at least some argument of fair market value. Mr. Adamczak said, Well, they -- VRC had not been engaged to perform valuations on those investments, and it was discussed that if those investments were worthless there's no point in obtaining a valuation.

So just think about that. And this is his deposition at 276, Line 17, through 277, Line 6.

Basically, Matt DiOrio says, Hey, these assets are worthless. Transfer them to this entity for $3. And they say, Well, shouldn't we have VRC value them? And DiOrio basically says, No need to value them. I told you they're worthless. Why spend money valuing them when I've already told you they're worthless? Even though they include a $32 million note payable by the DAF and they include at least other assets that we know are worth millions of dollars. We asked if Beecher had done anything independent, and they explained that had no way of confirming anything.

Now, luckily, those assets had been transferred back to Sentinel. And, luckily, the current directors, I believe, did listen to our arguments, and also had, I think, some pretty sharp instructions from CIMA. And as a result, those assets or those purported transfers have been unwound and those assets have been returned to Sentinel.

But this just shows the danger and risk that at every -- every opportunity, these individuals will try to keep moving these assets and try to keep evading them from judgment.

And by the way, this has happened before. Mr. Seery was testifying a little bit about what started all this. This -- Slide 43 just has a compilation from UBS Exhibit 52, which just showed the asset transfer or the fraudulent transfer that we alleged back in 2009.

And for UBS, this is just déjà vu all over again, because what we alleged in the New York case was, at the time, there was a whole bunch of assets that were pooled into HFP and then distributed to the winds right after default was declared in the contract and at the outset of this litigation.

Actually, after UBS had sued Highland, a couple months later they did this, you know, then face value of a couple hundred million dollars in assets that we had argued was fraudulently transferred.

What we see now happened in 2017 was basically the follow-on to that, like, everything that was left, let's put it all

together and send all that to Sentinel. So, to us, it is a pattern. And it is, as I said, déjà vu all over again.

And back then, just like in 2017, of course, Mr. Dondero signed on behalf of everybody. That's the typical pattern. That's the series of continued fraudulent transfers that had been -- UBS, but also really speak to what we've seen from Highland in connection with many of the creditors.

Sentinel again looked at all of this -- later, and they say, with respect to some of the other practices, they say that, Those charged with the Licensee and licensing at Sentinel governance could not explain the basis upon which the investments have been valued in August 2017.

They also couldn't explain the reason why the information that was relied on to value the investments for the purpose of premium couldn't be readily provided to the auditors upon request, considering that the policy inception and the financial statements on it was only a few months apart.

CIMA also noted, and this is Exhibit 11 at Bates 78819, that those charged with governance could not explain why the premium was adjusted without a commensurate adjustment to the indemnity limit provided or why the initial pricing was subsequently deemed not sufficient.

And they say, In addition, in any case, to amend an insurance policy to artificially inflate the premium amount to equal the value of investments transferred to the licensee

without any justifiable business purpose and economic substance is, at the very least, questionable.

In sum, the above matters cast significant doubt on the economic substance and business purpose of the transactions relating to the ATE coverage.

According to CIMA, it was Sentinel's own lawyers. They hired a lawyer in Cayman to look at this, and they tried to get some help -- this was back in 2017 -- to just effectuate this plan once it had been cooked up. And even back then the Cayman lawyer noted, Has any thought been given as to the legal validity of such a transfer, bearing in mind that these assets will then be put beyond the reach of the Plaintiffs in the U.S. litigation against the Fund. Obviously, the last thing you want to find is that the "premium" has to be returned or set aside as some unlawful preference or similar. Obviously, an issue for U.S. counsel, but just thought I should raise it. Well, you can imagine U.S. counsel at the time in 2017 did nothing, but this was obviously flagged by their Cayman counsel.

So, one factor that I skipped over but you've heard a lot about is the secrecy. And, really, the secrecy is a -- just sort of it wraps everything up. You know, we know the bankruptcy was in October 2019. We know that we got a decision that notified the world or at least notified Highland and Mr. Dondero and even Mr. Seery before he became a director

that there was this looming $1 billion judgment.

It was first issued as a decision. It was not made public so that the parties could have some time to try to negotiate settlement, which we -- you heard testimony in other proceedings that we started to with Mr. Ellington.

So Highland obviously had received it from the Court and knew all about the billion-dollar judgment.

February 10th, it -- I'm sorry, the billion-dollar then-decision.

By February 10, 2020, it is reduced to a judgment for Phase I. And yet from 2019 until the beginning of 2021, everyone -- all these ex-employees of Highland now who knew about this actively concealed it.

And of course, we start with Mr. Dondero. This is Mr. Ellington saying, Did you ever tell Mr. Dondero that there was an insurance policy issued by Sentinel that could potentially satisfy the judgment?

That was kind of an obvious question.

Ellington said, Well, I didn't need to tell Mr. Dondero. He was aware of it since the inception.

And, of course, Mr. Dondero signed it. So it just goes without saying Exhibit 1 shows that Dondero knew about it. And, of course, Mr. Dondero never said anything about it throughout, as you can see by his deposition.

Meanwhile, though, Mr. Sevilla also covered it up. We

asked Mr. DiOrio about Mr. Sevilla's role, and as we noted, he was the point person for things that happened on Sentinel. He knew everything about Sentinel.

We asked Mr. Sevilla, in his deposition transcript, 278, Line 20, to 279, Line 3: So, between the time the independent board was appointed and your departure from the company, did you ever disclose to any of the members of the independent board that you were aware the existence of a Sentinel insurance policy ostensibly provided for coverage for the loss of the UBS litigation?

Answer, no.

Mr. Leventon. Mr. Leventon doesn't just omit information, he -- well, you'll see for yourself. This is one of the documents where he had been tasked with tracking the assets through on SOHC. He says, this is Exhibit 16, and in one of his emails to Mr. Seery and to Mr. Demo and others, he claims he had been tracking the assets through an SOHC and CDO Fund. He was putting together a report with supporting documentation. And he claims that there's just this small account of cash and a few worthless securities.

Now, he's claiming he's tracking the assets through. Okay. He knows what happened to the assets of SOHC and CDO Funds. He helped devise the scheme to transfer them in 2017 to Sentinel. He has also been, every year, talking to Sentinel or their actuaries about the prospects of the

litigation. And yet when Mr. Seery, Mr. Demo, and others task him with tracking the assets, he just, you know, says what's there, doesn't ever mention this. You know, this would be, at a minimum, a material omission.

I think if you read the documents and you look in Exhibit 16, you'll see things that are even more concerning. This is not an accidental omission.

This is the list he provides, without identifying at all that there is, in fact, all of this other -- all these other assets that were transferred and a $10 million supposed insurance policy just available for the asking.

And he was asked, Well, you knew there was a schedule that showed Sentinel having an interest in Multi-Strat that specifically said, parentheses, from Highland CDO Fund. There was a schedule that showed that.

And he said, Well, I think that's fair. December 2017, I think that's fair.

And we asked, Well, when you were tasked with helping trace the assets of CDO Fund and HFP, you even talked to Mr. Ellington, in words or substance, about whether or not you should mention Sentinel, correct?

And this is an email exchange that Mr. Ellington had had with Mr. Leventon back in December of 2017. This is Exhibit 46. This showed -- this is of Highland Credit Opportunities. In other words, the Multi-Strat list of -- of interests in

Multi-Strat.

And you can see, back in the end of 2017, it was identified, the first one on the list is an interest of Sentinel in Credit Opportunities, also called Multi-Strat. Okay. That's the interest that right now is being restrained by Your Honor's order. And this interest was being -- was on the books as being settled but it said right in their document, parentheses, from Highland CDO Fund, because it had only been transferred a few months ago, in August. Right?

So Leventon and Ellington know this. They know that Sentinel has an asset that came from CDO Fund. Of course, not just because of this document. This is just one of many. But back then -- and, again, if you look at those documents, Mr. Leventon was asked, You never told anyone at the Pachulski firm that assets of CDO Fund held with respect to Multi-Strat may have been transferred to Sentinel, correct? And he says yes, that's correct. Just never -- never mentioned it.

We asked, What was the information you had about the assets of SOHC and CDO Fund from March of 2009 to the present that you chose not to provide to the Pachulski firm? He says, Answer, I knew that there had been a transaction in 2017 sometime with respect to an after-the-event insurance policy with Sentinel.

Then we asked, Did you ever disclose the existence of this policy to any of the independent directors?

Answer, I never discussed with them one way or the other.

This is all while he has been tasked with, as Mr. Seery put it, generally speaking, to trace the assets from 2009 through the present.

Mr. Ellington goes even further. He really tries to divert things. And you'll see in an email exchange where he jumps in and tries to cloud the issue by using a phrase he's used over and over again as he explains so-called ghost funds. This is an August 15, 2020 exchange that's got Mr. Ellington, Mr. Demo, Mr. Leventon, Mr. Seery, and others on it. And this is Exhibit 17.

Mr. Ellington jumps in. If you read the Exhibit 17, you'll see how he jumps in and he says, Look, stop, stop all this. You know, basically, he says, There's not much more to do.

He goes, I have personally discussed at length this situation with the head of KPMG Cayman Islands and he expressed to me there are currently more than 6,000 ghost funds such as these target entities -- the target entities, of course, are not just random funds out of the so-called 6,000 ghost funds, but CDO, SOHC, HFP -- stemming from the 2008 crisis that do not have directors, custodians, administrators, bank accounts, et cetera, that sit dormant, and, capital, NO ONE, capital letters, knows what they truly retain, et cetera.

He then said, I know that UBS is aware of the situation,

and I know Andy Clubok -- that's me -- knows of this situation, the so-called situation of everything being ghost funds because I've personally discussed it with him several dozen times, including as recently as this year.

He goes on to say, Oh, this process is a Herculean task. He and I just spent 100 hours, or excess of 100 hours, trying to piece together everything they can to create a true and accurate document record, based record, of what happened with these target entities.

He is affirmatively telling Mr. Seery, Mr. Demo, and others that, you know, not just waiving those funds and trying to trick them with that, but claiming that he is doing everything with Leventon to piece together everything they can to create a true and accurate document, at least record of what happened to these entities. And the simple thing that happened to those entities, the most important thing, frankly, the only really relevant thing, is that all of their assets were transferred or tried to be transferred in 2017 to Sentinel.

Now, by the way, some of those assets weren't transferred. So CDO Fund still had some accounts and still did have some assets, even when Mr. Ellington is claiming this. So the whole thing is, you know, inaccurate, but, frankly, just a downright -- well, I won't characterize it. I think it speaks for itself.

We deposed Mr. Ellington in this proceeding. This is at Deposition Transcript 83, Line 15, to 84:24. I asked him, Did you ever tell me that there was an insurance policy issued by Sentinel that potentially could satisfy that judgment?

Answer, No.

Did you ever tell Mr. Seery anything at all about the insurance policy that was issued by Sentinel with respect to the UBS litigation in New York?

Answer, No.

Question, Did you tell Mr. Nelms, Judge Nelms, anything at all about the insurance policy that was issued by Sentinel with respect to the UBS litigation in New York?

Answer, No.

Mr. Leventon was asked, Well, did you, in words or substance, ever ask Mr. Ellington whether you should disclose the policy?

And we got kind of a hard-to-understand answer, but it's Leventon Deposition Transcript 154, 217. The gist of it is Ellington told him not to.

The answer specifically says, So, the conversation was, is the policy relevant to the task I'm working on? And the answer, Mr. Ellington said he didn't believe that it was and therefore didn't need to be included as material because part of that past.

And then I asked, You know, you've been in conversations

with Mr. Seery. I don't talk to Mr. Seery hardly ever. So is there any other thing that any other -- anything else that I should know of or -- or any other reason, you know, outside of my task that I should include in the materials, and Scott said no. Okay?

Basically, this is a very narrowly defined -- it's an effort by Mr. Leventon to somehow define his task down so narrowly that he and Mr. Ellington could somehow have a conversation and believe in good faith, while they are lawyers working for the estate that's in bankruptcy, that somehow this is something they should affirmatively not disclose to Mr. Seery and his team.

And then we get to Mr. DiOrio. And Mr. DiOrio tried and tried to hide it, but ultimately I believe it was his documents that left -- were left behind or that were found that helped unravel the scheme. But back in January of '21, when he was still here, he repeatedly lied to Highland Capital.

This is an email exchange from January 28, '21. Remember, Mr. DiOrio is a Sentinel director at that time. Okay? He's getting paid exclusively by Highland Capital Management, but on Highland Capital Management time he has this side gig of being a Sentinel director. And he's asked -- he was asked to figure out what are the -- what are the assets that didn't make its way to actually be transferred. There's an asset

that's called Greenbrier. It's an interest in a CLO. And with respect to that particular asset, he claims he was working to reissue physical certificates, he'll keep everyone in the loop on the timing. Does not appear to be a swift process, but we're moving forward. The shares are still registered to Hare & Co., with CDO Opportunity Fund as beneficial owner.

So this is one of those assets where they, just because of the haste, had not -- not competently effectuated the transfer as they tried to do.

He talks about how BONY has a custody account in CDO Opportunity Fund's name, and been receiving past waterfall payments.

By the way, I think this has amounted to over $10 million, and these have been ultimately now paid to UBS and we're continuing to get it as part of the prior settlement agreement, but, you know, obviously only because it was identified at the last minute.

Anyway, Mr. DiOrio says, Well, these certificates were transferred in error in 2017 by Carter Chisholm, who no longer works at HCM. Now, Mr. DiOrio knows exactly what happened with these transfers, okay, but he just kind of gives this weird answer, it was transferred in error.

And then Mr. Demo says, Okay, but do we have any visibility into who Sentinel Reinsurance is? Who owns them?

What do they do? Et cetera.

Because this is about the time, as Mr. Seery testified, that it's all kind of starting to unravel. They've seen a ledger that showed that Sentinel actually had some interest in Multi-Strat, and that's kind of weird, and it sparked some memory, and certainly they really start fussing Mr. DiOrio, who is a director of Sentinel. And Mr. Demo asks him this January 27, 2021. This is Exhibit 18. What does Mr. DiOrio say? He says, It's a nondebtor, non-affiliate reinsurance company, but I do not know who or how it's owned. That's what he tells Mr. Demo and the others. Okay?

Now, we asked him about that, and we said, Well, you knew it was owned in part by Dondero?

Yes.

And you knew it was owned at least in part by Mr. Ellington?

This is when he gets under oath. His deposition transcript at Page 336, Lines 3, to 338, Line 1.

He said, yeah, he knew it when he told them that he didn't.

And we say, Well, he asked -- talking about Mr. Demo -- who owns Sentinel Reinsurance, right?

Answer, Yes.

Okay. And you didn't tell him Mr. Dondero and Mr. Ellington owned part of it, right?

Right.

Question, Well, why didn't you just explain this to Mr. Demo?

Answer, I wanted as little to do with Pachulski as possible, so I answered the questions and waited for the next one.

Okay? Now, to be sure, he wasn't under oath in Exhibit 18, I guess. But he's a member of the legal department, he's a Sentinel director, he's working for the bankruptcy estate at that time, and he just flat lies. There's no getting around it. And then when we're talking under oath, he admits the lie and, you know, basically just didn't want to -- didn't want to have anything to do with Pachulski, I guess.

Well, that's when luckily Mr. Seery now stepped in. And seeing all of this, I think he fires the last of these individuals who were still there. And then just, you know, weeks later makes a claim on behalf of CDO Fund to Sentinel for that $100,000 million, which, of course, he clearly would have done, and his deposition testimony reflects this, from the get go had he known about it, since we had a judgment and the insurance policy was intended to benefit UBS.

So that's secrecy.

Turning back to the factors, I'll run through the rest of these quickly. Transfers retain control. Well, of course. It is the case that Beecher had been servicing Sentinel --

throughout the time that Beecher worked for Sentinel, Dondero and Ellington were the ultimate beneficial owners, called UBOs. Mr. Adamczak testified to that on Pages 22, 24, and 25 of his deposition.

He was asked, What's the role of the ultimate beneficial owner? And as he understood it, the ultimate person would call the shots for the captive. And we asked him if that was true with respect to Dondero and Ellington, that they were the ones ultimately calling the shots. He said, To the best of our knowledge, that's correct.

Everything that was done -- remember, Sentinel doesn't have employees, so everything is either done by a Highland employee working for Sentinel or being executed by Beecher, which is sort of the agent that executes stuff. And they just did everything that Dondero and Ellington told them.

So, with all of that, where has this money gone? Okay? At least the money that has not been restrained. Where has some of the other money gone? And you heard a little bit about this, but I am sure you can't -- will not believe some of this.

Basically, the transferors, and that's Dondero and Ellington, retained control and have used that money that they transferred out of CDO Fund and HFP and all the others as their own personal piggybank. Here is just a sampling of some of the expenses that have been approved since that transfer.

And by the way, these are post-bankruptcy, November of 2019 through January of 2020 expenses that, unbeknownst to Mr. Seery and our understanding is unbeknownst to the Pachulski firm, were just being authorized by Mr. DiOrio and others post-bankruptcy with money out of Sentinel that should have been used to pay UBS's judgment.

First of all, here's an expense report from January 15, 2020 through January 19, 2020. It's UBS Exhibit 19. And in there you will see Ellington expenses for a London and Paris trip of over $78,000. At least one of these trips, I think it's this one, or maybe others, he went with his girlfriend. There are some emails that we have submitted that are in the records that show her, like, talk about which restaurants she wants to dine at, what hotels they want to stay in. All that's in the exhibits to the depositions. One of the -- one of the visits they did was a place called Sexy Fish. Sounds good. This is all being charged to Sentinel, okay?

Then there's another expense report to Toronto, $97,000. Interesting. There, they spent about $12,000 at the Rebel nightclub. Okay? Again, this is all instead of using the money to satisfy the judgment.

Meanwhile, there's another one. This is December of 2019. Scott Ellington. A $318,000 expense report. Okay. Now, this is before Mr. Seery has been appointed but post-bankruptcy. And I'm sure that the Pachulski firm had no idea about this.

A huge expense on this one was the Sapphire. This is a trip to Las Vegas. Somehow they spent $318,000 in Las Vegas. And there's five entries that total, you know, something like almost $50,000 or something to Sapphire. So we said, Well, what's Sapphire? This is Sapphire. And you can see inside 72, there's a picture, and we've hidden strategically some of it.

But we asked Mr. Adamczak, the corporate representative of Beecher Carlson, at Page 101, Lines 15, to 102, What did you understand Sapphire to be?

He answered, A typical Las Vegas strip club.

Question, Did you look at that at the time when they submitted $318,000 in expenses?

Answer, Yes.

And did you ask Mr. DiOrio specifically about that?

Answer, I did.

Question, And his answer was that it was business development?

Answer, They were all business development. This is how they do business.

Question, They being who?

Answer, Highland Capital.

Okay? By the way, the business is, on one day, or one evening, December 16, 2019, as you can see, $9,800, $9,800, $9,000, all being supposedly conducted at the Sapphire strip

club.

Back in the day, this was looked at. And you can see on some of these emails. Remember, you heard about this SAS Management server that's apparently been hidden from the Highland -- from the Debtor? Sarah Goldsmith to Matt DiOrio says that she was submitting the attached expense reimbursement on behalf of Scott Ellington. Ms. Goldsmith, I think, was his assistant. Subject to an approval by the directors, please instruct reimbursement to Scott Ellington for this total travel expenses of $318,000.

Mr. DiOrio forwards that on to Beecher Carlson and just says, Hey, guys, Please submit the attached expenses for approval and reimbursement.

By the way, as a heads up, settlement talks are cranking up, but okay.

Internally at Beecher Carlson -- and this finally gets their attention. They mostly just do what they're told, but internally Mr. Adamczak emails with his colleague and says, Nice. What the hell is going on with these expenses? I question how much, quote, business development is actually being done. Did you look at this?

Well, we asked, What raises concern? He said, The fact there was $318,000 worth of expenses at first, but there was a significant amount of that that seemed to be club-related. We asked if the directors approved it. He said, Ultimately, but

they also questioned it.

Oh, by the way, these are not the current directors. As Mr. Morris noted, the current directors are new, and those are the ones we're dealing with now. These were Mr. DiOrio and his two other colleagues back then.

They were asked -- they requested the nature of these expenses and then specifically inquired whether all or both of the UBOs would be okay with running these expenses through the captive as business development. That was their only question. Are the UBOs -- that is, Dondero and Ellington -- going to be okay with running these expenses through the captive?

Who did they ask? Matt DiOrio. What did he answer? That it was appropriate.

And I just clarified, So he was saying it's appropriate because the UBOs said it was appropriate?

Answer, To my knowledge, yes.

No justification other than, Hey, if Dondero and Ellington said it's okay, at least according to DiOrio, it must be okay.

That's not it, though. It wasn't just a mod... you know, relatively, I guess, when you consider the total amount of expenses. There's also dividend payments. And on Slide 77, you see that we've uncovered at least a total of $8.9 million dividend payments that were paid to Mr. Dondero and Mr. Ellington's entities that they owned, that they're the

intermediaries to them as the ultimate beneficial owners.

Here is an example of a payment that was made in April of 2020 -- again, unbeknownst I think at the time, I'm sure at the time, to Mr. Seery. And this is out of Sentinel's money. It's supposed to be -- you know, they don't even have a hundred million in cash at that time, and yet they're dividending up to Mr. Dondero and Mr. Ellington. There is an approval of the payment, of course. It's done by Matt DiOrio and his -- and then two colleagues, as the Sentinel director at the time, in April 24, 2020. This is Exhibit 47. A total of $6.4 million. And you can see it's divided up. About $4.4 million goes to Main Spring, Limited. This is Exhibit 21. That's a Dondero entity. And you can see there's -- Exhibit 22 shows the wire transfer to another entity called Montage of about $1.9 million. That's the Ellington-affiliated entity.

So, the grand total of about $6.4 million gets distributed 70/30, as we've seen in the ownership interest, to entities controlled, respectively, by Mr. Dondero and Mr. Ellington, as set forth in Exhibits 21 and 22.

That's not all, of course. Even in 2021, in January of 2020 -- sort of the last gasp before they get found out, there's another dividend payment. Again, approved by Mr. DiOrio. January 11, 2021. This is -- this is all during a time when they're not telling anything to Mr. Seery or Mr. Demo or the others about Sentinel. And yet Mr. DiOrio is

hustling dividend payments up to Dondero and Ellington. And you can see Exhibits 48 and 23 show how the money ultimately gets transferred, you know, even, you know, as late as the spring of 2021.

Finally, Sentinel money. Mr. Morris talked about this. And I guess there's a lawyer on the -- on the -- in the proceedings today that maybe intends to try to benefit from Sentinel's money as well.

In June 2021, Beecher Carlson was given a request for expense approval for Ross & Smith of about $75,000. This, according to Mr. DiOrio, was all in order and should be settled. Mr. DiOrio represents -- this is June of 2021, after he's been fired by Highland. He says, The company identified a group of former employees, my -- former employees, okay? Sentinel had no employees. And by the way, many of these people testified under oath that not only were they not employees, but they hardly did anything at all with Sentinel. Yet Mr. DiOrio is claiming that the company had identified a group of former employees, myself included -- presumably, he's talking about former Sentinel employees; there's no reason why Sentinel would be indemnifying former Highland employees. But in any event, he says, It relates to our defense with today's hearing that I mentioned.

Now, they're not a part of this hearing. To the extent Sentinel -- Sentinel insurance doesn't go to Mr. DiOrio for

trying to avoid deposition testimony or something, and that's, by the way, what that hearing was.

Your Honor may not remember that date. We do. It was June 24, 2021. This is an entry that shows that that hearing that day was the motion we had to make to compel the deposition testimony, because at the time all of these former Highland employees were fighting having to come provide all of this testimony you've now seen. You would never have seen much of what we presented today had this motion to compel not been granted. And they charged $75,000 to fight it.

Now, we asked for fees at the time. And we understand why Your Honor didn't award fees, but -- we can understand that. But it sort of put us flat. Not only did they not pay our fees for having to move to compel, they depleted Sentinel further, which owes us, at the time, owes us quite a bit of money, for the privilege of trying to stop us from finding out all of the evidence here.

So, and I say that it's UBS's money at Sentinel because the New York courts say so. The New York courts have held that insurance policies may constitute debts against which a money judgment may be enforced under Article 52 of the New York CPLR, and a judgment debtor can enforce the subject debt arising from the court's final judgment against the judgment debtor's insurer, pursuant to Article 52 of the CPLR. So, really, this money really ultimately should go to UBS. It

should not be allowed to continue to be paid for this indemnification or for any other purpose, et cetera.

At the end of the day, even if the policy were valued, or valid, UBS would be owed at least $100 million, even if it was a totally valid thing. But in fact, UBS is owed the $100 million plus the $80 million for the fraudulent transfer, for a total of over $180 million.

So that's how we get to success on the merits. The others, I really don't need to go much through.

I think, you know, irreparable injury. In brief, there's case law that makes it clear that the irreparable injury element is satisfied when the defendants would dissipate the frozen assets, and if the defendants were to dissipate or transfer these assets out of the jurisdiction, the District Court would not be able to grant the effective remedy. That's from the Fifth Circuit, *Janvey v. Alguire*, 647 F.3d 585. There's similar law in the Ninth Circuit: *Johnson v. Couturier*, 572 F.3d 1067.

And, again, Mr. Seery, as you heard him testify live, but this is from his deposition, made it clear that he really had no choice. Without the TRO, this money probably would have been already transferred to Sentinel and gosh knows what would have happened.

The weighing of harms. Well, this adversary proceeding, of course, as Mr. Morris said, we kind of expected maybe

Sentinel or maybe Mr. DiOrio or someone to intervene. No one did. So the proceeding is between UBS and Highland. There is huge harm to UBS if the injunction is not granted.

The other party is Highland, because Highland -- you know, there's certainly no benefit to Highland, and instead what Highland will face is more litigation, costs, and a fraud, which, of course, Highland doesn't want. And that's why I think Highland -- not only is there no harm to Highland to granting the relief, but Highland wants to cut these proceedings short. And that's fine with us, as long as we were able to present this evidence, as long as it doesn't cut short the ability to get the full order that we've requested. So, I think the weighing of harms is easy.

And finally I end with the public interest. Your Honor, there is no harm to the public interest if the Court does enjoin fraudulent behavior. That is the only way that we can prevent harm to the public interest. You have seen a pattern, a series, you know, it's tacked on to other things you've seen in connection with these proceedings. But the prevention of unjust enrichment by means of fraud or misappropriation, even if it was affecting "only private entities," is in the general public interest.

Of course, here, all of these things impact not just UBS, it affects the other creditors of the estate. It affects the Court's time. And certainly, I think as Mr. Morris put it,

it's just the signal that it sends to allow this to go unchecked would be terrible.

So it's many issues of concern that we haven't even dived into as much as we could, including testimony that is questionable, I'll say, at best, and various transfers and information that was not provided to the Court and its representatives. And, of course, these proceedings, I suspect there will be issues for someone else for another day to deal with.

But for us, we just ask that the Court enter the injunction as we have suggested with the minor edits to the version that Mr. Morris and his colleagues submitted. The public interest will be served by that.

And I'll end with, you know, why are we still here? We're still here because UBS still has that over billion-dollar judgement. And, in fact, because of interest, that judgment has grown by about $116 million, okay, while we've been dealing with all of this. While we could've maybe gotten a significant portion, maybe could've settled, et cetera, but it's now up to over $1.1 billion.

And how much total has UBS been paid by the judgment debtors? About $14 million. By the way, the $14 million is those assets that we caught at the last second that were ineffectually tried to -- transferred, even though they tried to be. But that's all that UBS has recovered from the actual

judgment debtors. And that's why we're still here, that's why we have to stay here, and that's why we should be entitled to continue to make sure that this Court's injunctive power protects UBS's ability to continue in its efforts.

Thank you for your patience. I appreciate it.

THE COURT: All right. I'm going to ask you a couple of follow-up questions. I've heard today that once Highland's independent directors, Strand's, discovered all of this, the Sentinel policy and the transfer of assets, they immediately notified UBS. And one of the results was the settlement that had originally been struck between UBS and Highland was increased with $50 million more to go to UBS. Could you just elaborate on that? Before this was all discovered, the settlement that had been negotiated that was going to be presented to the Bankruptcy Court involved how much of an allowed claim that would be paid out of the estate and any other relevant components?

MR. MORRIS: Mr. Clubok, I have those numbers if you don't have them handy.

THE COURT: Okay. Or Mr. Morris.

MR. CLUBOK: Thank you. I was just going to -- so I would appreciate that.

MS. MORRIS: So, at the confirmation hearing, the proposed settlement was a Class 8 general unsecured claim for $50 million, a $25 million Class 9 subordinated general

unsecured claim, and a cash payment of $18-1/2 million from Multi-Strat.

After the disclosure of this information, the Class 8 claim was increased by $15 million, from $50 to $65 million, and the Class 9 subordinated general unsecured claim was increased by $35 million, from $25 to $60 million. And the Multi-Strat cash payment remained the same.

So, just to summarize, the Class 8 claim went up by $15 million and the Class 9 claim went up by $35 million.

THE COURT: Okay. And just another refresher of my memory. The global mediation that happened in this case, it was summer 2020, the global mediation before former Judge Gropper and Sylvia Mayer. So I know UBS technically did not settle during that mediation, but it came about, you know, a few weeks or months after. But there had been participation by UBS and the Debtor in that mediation. And, again, this was summer 2020, before anyone knew about this Sentinel insurance policy, correct?

MR. CLUBOK: That's correct, Your Honor, but also, as you note, the mediation started in the summer of 2020. We were, prior to doing that mediation, in anticipation of that mediation, asking for all this financial information. To Mr. Seery's credit, as he testified, he said, Hey, we'll get it to you. We -- that's fair. And he said, I'll tell my folks to get whatever you need, or words to that effect.

We didn't settle in the first round when some others did, but we had continuing mediation sessions into the fall. And I believe, I don't have the exact dates, but I believe UBS then had follow-on continuing discussions with Judge Gropper or Ms. Mayer in, you know, I want to say October, September/October time frame. And that's when we're still in the mediation, we believe or we've been told at that time, oh, you've got all the information about the assets now, because in the first mediation we didn't have it, so that's why I said, hey, we can't settle. By the time we had that second set of sessions with Judge Gropper and Ms. Mayer, then we had been given all the information, as we now know, because Mr. Leventon, Mr. Ellington, and others told Mr. Seery and Mr. Morris and his team, hey, this is everything.

So, with that in hand, that's when we reached this initial settlement that Mr. Morris described to you. And then, you know, as we're working through it and we'd gotten that -- I think we finally got to that settlement by the end of the year, by the end of 2020. But then, luckily, as we continued to press for information, and then in January a lot of this gets uncovered. In fact, before we had finalized that settlement per those discussions, this was all uncovered. And so that's what caused us to, then, say, well, --

THE COURT: I'm just mainly trying to be clear. And I'm just thinking through all the time and attorneys' fees

that were incurred related to this UBS claim and what was a fair and equitable settlement, without anyone having the benefit of the knowledge about this Sentinel transaction.

MR. CLUBOK: For sure. And my point is it started August, but we worked all the way -- I think maybe it was even close to Christmas. I feel like it was very much at the end of the year when we finally got a settlement, and all that was on the fiction of the belated production of some of the assets, which then we get to January and it's like ah, gee, we have to start over again. And you know, it's all those months of attorneys' fees and time and et cetera, all because or largely because this information was hidden from Mr. Seery, Mr. Morris, and his colleagues.

THE COURT: Okay. My last question for you. We heard a little bit of testimony from Mr. Seery about the after-the-fact insurance policy and whether that's a thing or not. That's our new phrase in this case, "Is this really a thing or not?" it seems like.

What is your view of this? I mean, I'm certainly generally aware. I think Mr. Seery said, you know, in jurisdictions where there's a loser-pay concept as opposed to the American rule there is a concept such as this, I guess, to at least pay defense costs. But what is your take on this, you know, fake or real insurance policy?

MR. CLUBOK: So, so a slightly different take. It's

a little more nuanced. There is certainly something called an after-the-event insurance policy that is not -- it would be common for some insurers to issue those policies. Sometimes it's call judgment insurance. And basically what happens is that, you know, let's say your company gets hit with some lawsuit, maybe it's an environmental potential liability, so it's now known that, you know, you are alleged to have leaked chemicals onto somebody's property. So, a claim is filed. Normally, obviously, you can't buy insurance to insure against something right after you find out about it, but there are companies, I understand, insurers, that will say, okay, you've already been sued; I'm going to now insure you against the judgment. Now, the premium might be very high, and we have to, you know, price it the right way. But, you know, you have a, you know, if you have a billion dollar claim, if you want a billion dollar judgment, the premium might be, you know, $250 million, or you have a $100 million claim, you know, it could be a $100 million claim, and so maybe the premium could be $25 [million]. Let's look at the strengths and weaknesses, we'll price it out, et cetera.

There is a market that I'm very loosely describing. I'm not an insurance expert. I'm not testifying here. But my understanding is that is a market and you could theoretically get it.

What is in the record here is that these guys came up with

this idea that -- probably because they had heard there's something like this -- and they start with the proposition, okay, all the assets, hundred million coverage, let's backdoor figure out how to work it out.

They then ask Beecher Carlson to "shop it" to see if they could get a policy. And Beecher Carlson, there's extensive testimony in this, I'm not sure we submitted every bit, but we could if we needed to, basically said, yeah, we shopped around and no -- no insurance would have done it for anything like that. There would have been a very different premium. They would have had to do lots of due diligence. It would have been a whole different process.

They said some of them agreed to just look into it as a favor to Beecher Carlson, but they were never going to write a policy. And so there was some -- something suspect. Some of the individuals said, oh, this looks very legitimate. We priced it around. Now, one of -- some of them said, oh, we priced it around. There's other testimony that some of it's been designated by us that I didn't cover today for purpose of time that say, yeah, but no other insurer would -- no other insurer would do it at this price. Right?

Which just shows it's not -- even if it's a thing, theoretically, this particular transaction is not arm's length. Obviously, they grossly overpaid. They did it in a way that was very highly irregular for any insurance company.

And they -- and for Sentinel, it was the one and only ATE policy they ever tried to issue.

So, yes, it's a thing. That's why they -- there's enough there that they, in some of their deposition testimony, can sort of say, this is a legitimate thing. And that's why, you know, if we take them at their word, it's perfectly legitimate to have a hundred -- you know, had they told us, hey, we spent $25 million and we got in a $100 million insurance policy, we probably would have said, that sounds okay. You know.

Had they told us we shipped away $300 million face-value assets that were worth at least $105 million and then we're going to buy $100 million policies and we're going to hide it from you and never pay out on it, that wouldn't be so good. And that's the difference between a thing that's legit and a thing that is let's just say highly irregular.

THE COURT: Okay. All right. I just wanted to be educated on that point. I realize what the real beef is here, the nondisclosure.

MR. CLUBOK: Did I give you the information you needed?

THE COURT: What?

MR. CLUBOK: I'm sorry. Did I give you what you needed --

THE COURT: Yes, you did.

MR. CLUBOK: -- on that?

THE COURT: All right. Thank you.

MR. CLUBOK: Okay.

THE COURT: Was there anything else? I think you rested, correct?

MR. CLUBOK: I assume Mr. Morris -- I don't know if there's going to be "closing arguments." I don't need any if Mr. Morris is comfortable with standing on the record, unless there's final --

MR. MORRIS: I've got about three minutes, Your Honor, if I may.

THE COURT: All right. Go ahead, Mr. Morris.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. MORRIS: Number one, I don't think anybody could fairly call this insurance policy a legitimate thing, and you know that from two undisputed facts. Number one, it was never disclosed, and number two, nobody ever made a claim until Jim Seery did. So nobody ever tried to recover the assets and nobody ever disclosed the existence of the policy. It is not a thing.

Number two, at Slide 79 of Mr. Clubok's presentation, you'll see a transfer of $6.4 million to an entity called Main Spring. You'll see that that transfer was made in the spring of 2020, and we believe, Your Honor, that that $6.4 million was part of the $10 million that Mr. Dondero referred to in April in open court when he testified that he had caused $10

million to be paid to Highland's insiders.

So, think about that. They transfer the money to Sentinel. That money was from the Defendants that UBS was suing. And then they use that money to pay the insiders at the same time they're signing the indemnity agreement. At the exact same moment.

Your Honor, I told you that Mr. Seery and the Debtor and the independent board agreed to the preliminary injunction but could not agree to a permanent injunction because they didn't have personal knowledge of all the facts. We knew of the existence of the policy, but Mr. Clubok's presentation and the work done by his team show exactly the justification, the rationale, and the common sense that Mr. Seery and the independent board showed in not rushing to a conclusion here.

The evidence that Mr. Clubok presented today was unknown to the Debtor, was unknown to the independent board, and we thank them for their diligence and for their work.

At the end of the day, Your Honor, to borrow a phrase the Court has used before, this is not a garden-variety commercial dispute. This is not a garden-variety fraudulent transfer action. This is not a garden-variety breach of fiduciary duty. This is fraud, plain and simple, compounded by the failure, the intentional -- knowing, intentional failure to disclose post-bankruptcy.

We'd respectfully request that the Court grant the motion.

THE COURT: All right.

MR. CLUBOK: Your Honor, if I may.

THE COURT: You may.

MR. CLUBOK: Very briefly. I just --

THE COURT: Go ahead.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. CLUBOK: Sorry. Yeah, as a housekeeping matter, I would like to offer our presentation as a demonstrative exhibit reflective of the evidence. We will provide you with a hard copy. It refers to, obviously, many of the exhibits that we submitted, and it'll be up to the Court's convenience, I think. I think we've -- we've given a copy to Mr. Morris ahead of time. I think there's no objection to that being submitted to Your Honor.

I would just like to, you know, end by saying, you know, we started the proceedings, we appreciate, we understand certainly why Highland wanted to stop the bleeding and stop spending money on this proceeding, and so that -- we have no issue with that.

We would ask that -- we provided a redline that makes mild edits that I think -- dare I hope, Mr. Morris, that, per agreement, can and should be made to the proposed order. They submitted one and we submitted a slightly proposed -- one which also referred to a consideration of the evidence that we anticipated being able to present today, and most importantly,

now that we've presented that evidence today, I think that justifies a modest change in the order along the lines to that effect.

I see Mr. Morris nodding, so hopefully that means he agrees.

MR. MORRIS: It does. We hadn't heard the evidence before, Your Honor. I'd never seen Mr. Clubok's presentation. I didn't know quite what he was going to do today. And that's the reason why we had a slight dispute over some of the language.

But based on the evidence that I heard, you know, if we could take one last review of it and confirm, but I have no reason to believe that we'll have any objection.

THE COURT: All right. And you have no objection to the PowerPoint being part of the record, Mr. Morris?

MR. MORRIS: Not as -- not as a demonstrative exhibit, Your Honor, --

THE COURT: Okay.

MR. MORRIS: -- which is, I think, what Mr. Clubok said.

THE COURT: All right. Well, Mr. Clubok, if you could send it to Traci Ellison, with copy to counsel, I will make that part of the record. It's always, I think, easier to understand a transcript, if anyone's looking at it after the fact, if they have the PowerPoint in the Court file to cross-

reference.

Well, it's been, for lack of a better term, an amazing day of evidence. The Court believes the evidence is overwhelming to justify the granting of an injunction here. And as was stated early on, it's been phrased in terms of it being a permanent injunction, but as I understand it, the injunction sought would be to enjoin disbursement, disposition of the so-called transferred assets until a further order of a court of competent jurisdiction with regard to fraudulent transfer litigation or other litigation over the Sentinel matters or a settlement with Sentinel.

Certainly, the four prongs for an injunction have been met here.

I believe the relief is necessary to avoid immediate and irreparable harm to the UBS entities.

I believe UBS has made a very strong showing of likely success on the merits here with regard to these transfers of assets being fraudulent and with regard to a potential showing of insolvency or inability of the transferors to pay debts as they become due, and as a result of the transfers, consideration for the transfers appears to have been inadequate.

Secrecy of the transaction.

Certainly, there are all of these indicia of fraud suggesting UBS would succeed on the merits.

The balance of equities certainly tip in favor of UBS here. Injury to it would appear to outweigh any damages that the injunction would cause Highland. And such relief would serve the public interest.

So, the Court reserves the right to supplement in a more fulsome form of order, but, again, the motion of the Debtor to withdraw its answer disputing this relief is granted, and I think judgment for this injunctive relief is also appropriate at this juncture.

I said that it's been an amazing day of evidence. It's been amazing. It's been exhausting. It's been troubling. You know, I think it was, Mr. Morris, you who said at the beginning today that, you know, Debtor-in-Possession counsel is not a prosecutor, it's not the SEC, it's not the State Bar disciplinary agency. And, you know, your goal for your client is always to maximize value for creditors and get a good overall result for all parties in interest affected by the bankruptcy.

I could say something similar right now that I, you know, I oversee these things. I apply the Bankruptcy Code to motions filed and different relief sought and grant relief where appropriate that is designed to help companies or people get a fresh start and help creditors get paid what they're justly owed.

But this evidence today, I am, unfortunately, duty-bound

to do more than just sign the judgment and order that's submitted to me and forget about it. I'm just letting you know that referrals will likely be made to the State Bar disciplinary agencies regarding the attorneys' activities that I've heard about. And, you know, it's not a good day in court when I'm looking at 18 U.S.C. during the middle of evidence, but I'm just going to let observers who -- I don't who all is on the WebEx today. I don't have all the little boxes on my screen to know. But 18 U.S.C. Section 3057: Any judge having reasonable grounds for believing that violation of laws of the United Stated relating to insolvent debtors has been committed or that an investigation should be had in connection therewith shall report to the appropriate United States Attorney all the facts and circumstances of the case, the names of the witnesses, and the offense or offenses believed to have been committed. And there are different provisions of Title 18 that I'm very, very concerned may be implicated.

So, I'm duty-bound to go back and carefully look at some of the exhibits that have been submitted today. And, again, I'm not the U.S. Attorney and I'm not a criminal judge. I don't plan on combing over everything as, you know, a grand jury would do. But if I think there is enough there, I will be making a referral to the U.S. Attorney.

Again, the nondisclosure, the potential cover-up here is beyond troubling. And, you know, I'm duty-bound to do what

I've got to do if the exhibits look as damning as, you know, on further reflection in chambers, as they did sitting here on the bench today.

So, you know, I regret, I regret this greatly, but, you know, I'm just letting people know that it's a potential consequence of what I've heard today.

All right. Anything else? All right.

MR. MORRIS: No, Your Honor. Thank you.

THE COURT: Thank you. We stand adjourned.

(Proceedings concluded at 1:16 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 **08/10/2022**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

EXHIBIT 10

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Hunter Mountain Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Hunter Mountain Trust c/o E. P. Keiffer Rochelle McCullough LLP 325 N Saint Paul St Ste 4500 Dallas, TX 75201-3827, USA	See summary page
Contact phone 214.580.2525	Contact phone 214.335.7969
Contact email pkeiffer@romclaw.com	Contact email Jhonis@RandAdvisors.com

(see summary page for notice party information)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 60,298,739.00 . **Does this amount include interest or other charges?**

☐ No

☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit A

9. **Is all or part of the claim secured?**

☐ No

☑ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☑ Other. Describe: Common law and contractual setoff rights

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $60,298,739.00

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☐ No

☑ Yes. Identify the property: See summary page

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/02/2020
MM / DD / YYYY

/s/John M. Honis
Signature

Print the name of the person who is completing and signing this claim:

Name: John M. Honis
First name Middle name Last name

Title: Trustee for Hunter Mountain Trust

Company: Hunter Mountain Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 87 Railroad Place - Suite 403, Saratoga Springs, NE, 12866, USA

Contact phone 214.335.7969 Email Jhonis@RandAdvisors.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
Hunter Mountain Trust
c/o E. P. Keiffer
Rochelle McCullough LLP
325 N Saint Paul St Ste 4500
Dallas, TX, 75201-3827
USA
Phone:
214.580.2525
Phone 2:
214.953.0182
Fax:
214.953.0185
Email:
pkeiffer@romclaw.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Disbursement/Notice Parties:

Hunter Mountain Trust
John Honis, Trustee for Hunter Mountain Trust
87 Railroad Place - Suite 403
Saratoga Springs, NE, 12866
United States
Phone:
214.335.7969
Phone 2:
Fax:
E-mail:
Jhonis@RandAdvisors.com
DISBURSEMENT ADDRESS

John Honis, Trustee for Hunter Mountain Trust
87 Railroad Place - Suite 403
Saratoga Springs, NE, 12866
United States
Phone:
214.335.7969
Phone 2:
Fax:
E-mail:
Jhonis@RandAdvisors.com

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit A

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
60,298,739.00

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
Yes: 60,298,739.00
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
Yes, See attached Exhibit A - Common law and contractual setoff rights

Nature of Secured Amount:
Other
Describe: Common law and contractual setoff rights
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

VN: A9520313910D362DCA73628BB3BF78D0

Submitted By:
John M. Honis on 02-Apr-2020 4:36:21 p.m. Eastern Time
Title:
Trustee for Hunter Mountain Trust
Company:
Hunter Mountain Trust

Optional Signature Address:
John M. Honis
87 Railroad Place - Suite 403

Saratoga Springs, NE, 12866
USA
Telephone Number:
214.335.7969
Email:
Jhonis@RandAdvisors.com

Fill in this information to identify the case:

Debtor 1 HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of Texas

Case number 19-34054-sgj11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Hunter Mountain Trust
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
E. P. Keiffer, Rochelle McCullough, LLP Name	John Honis, Trustee for Hunter Mountain Trust Name
325 St. Paul St., Ste 4500 Number Street	87 Railroad Place - Suite 403 Number Street
Dallas TX 75201 City State ZIP Code	Saratoga Springs Ne 12866 City State ZIP Code
Contact phone 214.580.2525	Contact phone 214.335.7969
Contact email pkeiffer@romclaw.com	Contact email Jhonis@RandAdvisors.com.

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 60,298,739.00 . **Does this amount include interest or other charges?**
☐ No
☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
See attached Exhibit "A"

9. **Is all or part of the claim secured?**
☐ No
☑ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☑ Other. Describe: Common law & contractual setoff rights - See Exhibit "A"

Basis for perfection: Common law & contractual setoff rights - See Exhibit "A"
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $____
Amount of the claim that is secured: $____
Amount of the claim that is unsecured: $____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $____

Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $____

11. **Is this claim subject to a right of setoff?**
☐ No
☑ Yes. Identify the property: Common law & contractual setoff rights - See Exhibit "A"

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/02/2020
MM / DD / YYYY

John M. Honis
Signature

Print the name of the person who is completing and signing this claim:

Name: John M. Honis
First name Middle name Last name

Title: Trustee for Hunter Mountain Trust

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 87 Railroad Place - Suite 403
Number Street

Saratoga Springs, NY 12866
City State ZIP Code

Contact phone 214.335.7969 Email Jhonis@RandAdvisors.com.

EXHIBIT "A"

Hunter Mountain Trust (HMT) is the obligor under an original $63,000,000 Secured Promissory Note that HMT entered into with Highland Capital Management, L.P. (the "Debtor") as payee on or after December 21, 2015 (the "Secured Contribution Note") pursuant to the terms and conditions of the Contribution Agreement of even date where HMT made a cash contribution of $7,000,000 and issued the Secured Contribution Note for the balance of the $70,000,000 obligation detailed in the Contribution Agreement.

Just prior to the Petition Date, as of September 30, 2020, HMT was obligated to the Debtor in the amount of $56,873,209, with interest accruing thereafter with subsequently scheduled principal payments until the Secured Contribution Note comes due by its terms.

The amount of the claim stated on the proof of claim form ($60,298,739) is the maximum balance due by HMT to Debtor per the amortization schedule attached hereto if the Priority Distributions were timely made.

Notwithstanding denoting this amount as the maximum, the indemnity protect HMT from and against, *any and all losses* incurred or sustained by, or imposed upon it by virtue of the Debtor's failure to perform and such listed amount may necessarily increase over the stated amount in the proof of claim.

Pursuant to Section 6.02 of the Contribution Agreement (which caused the Secured Contribution Note to be executed and the cash contribution to be made) the Debtor (identified as the Partnership in the Contribution Agreement) agreed to indemnify HMT (identified as Contributor in the Contribution Agreement) as follows:

> **Section 6.02 Indemnification By the Partnership**. Subject to the other terms and conditions of this Article VI, the Partnership shall indemnify and defend Contributor and its trustees, sponsors, administrators, grantors, officers, directors, managers, Affiliates, beneficiaries, shareholders, members, partners, successors and assigns (collectively, the "Contributor Indemnified Parties") against, and shall hold the Contributor Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any Contributor Indemnified Parties based upon, arising out of, with respect to or by reason of:
>
> (a) any inaccuracy in or breach of any of the representations or warranties of the Partnership contained in this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party;
>
> (b) *any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Partnership pursuant to this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party*; and

(c) any and all actions, suits, proceedings, claims, demands and Losses incident to any of the foregoing or incurred in attempting to oppose the imposition thereof, or in enforcing this indemnity. [*emphasis added*]

While there are limitations on this indemnity, as detailed in Section 6.05, those limitations do not affect HMT's claim for indemnity for the Debtor's existing or future failures to address its obligation to make Priority Distributions to HMT as detailed first in the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 21, 2015 attached to the Contribution Agreement (all of which were retained in the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 24, 2015 – referenced in the Debtor's Schedule G):

3.9 (b) **Priority Distributions.** Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Partners[1] in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records; and

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year.

4.2 (e) **Default on Priority Distributions**. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

With regard to missed Priority Distributions and Priority Distributions that likely will not occur hereinafter, HMT claims the maximum benefit available to it on account of the Indemnity referenced in Section 6.02 of the Contribution Agreement, with regard to the Debtor's obligation

[1] HMT is the sole Class B Partner

to fund Priority Distributions per the Fourth Amended and Restated Agreement of Limited Partnership, an "agreement or obligation to be performed by the Partnership pursuant to this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party."

Pursuant to Section 6.05 (e) of the Contribution Agreement HMT's remedy is subject to the following restriction where Partnership is the Debtor and HMT is an Indemnified Party:

> (e) Subject to the limitations in this Section 6.05, any indemnification obligation of the Partnership under Section 6.02 shall not be payable to the Indemnified Party in cash, but shall instead be satisfied by a reduction in the principal balance of the Contribution Note for the amount of such indemnification obligation.

This provision of the Contribution Agreement, HMT, asserts, functionally sets up a contractual right of set off as to any claim by the Debtor under the Secured Contribution Note in addition to any common law right of set off which HMT may have as against any claims by the Debtor with regard to the any obligations due under the Secured Contribution Note.

Complete copies of documents supporting this proof of claim are available from counsel for HMT upon request.

Scheduled Amortization through 2023

"Purchase" Notes*

Principal Outstanding 9/30/19				$ 65,009,113
Payment Date	Interest Due	Principal Due	Total Payment Due	Ending Principal Bal
12/24/19	1,696,738	1,052,118	2,748,855	63,956,995
12/24/20	1,673,851	1,181,995	2,855,846	62,775,000
12/24/21	1,638,428	4,185,000	5,823,428	58,590,000
12/24/22	1,529,199	4,185,000	5,714,199	54,405,000
12/24/23	1,419,971	4,185,000	5,604,971	50,220,000

* Comprised of four underlying notes owed to each of the Seller's of LP interests

"Contribution" Note

Principal Outstanding 9/30/19				$ 56,873,209
Payment Date	Interest PIK'd	Principal Due	Total Payment Due	Ending Principal Bal
12/21/19	1,094,855	-	-	57,968,065
12/21/20	1,517,112	-	-	59,485,176
12/21/21	1,552,563	739,001	739,001	60,298,739
12/21/22	1,573,797	5,000,000	5,000,000	56,872,536
12/21/23	1,484,373	5,000,000	5,000,000	53,356,909

EXHIBIT 11

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Capital Management Fund Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 972-628-4100	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Capital Management Fund Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 300 Crescent Court, Ste. 700, Dallas, TX, 75201

Contact phone: 9726284100

¨1¤}HV4$((«
Email: fwaterhouse@highlandcapital

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 1:48:40 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Capital Management Fund Advisors, L.P.

Optional Signature Address:
Frank George Waterhouse
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Telephone Number:
9726284100
Email:
fwaterhouse@highlandcapital.com

VN: B504D3A6395DEC846A691C34933264F1

Exhibit A

Highland Capital Management Fund Advisors ("Claimant") is the beneficiary of a Shared Services Agreement with the Debtor. It has previously made payments for the Debtor and under the Shared Services Agreement is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of the agreement is attached hereto.

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

	Valuation Committee
Trading	
	Trading desk services
Operations	
	Trade settlement

EXHIBIT 12

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Global Allocation Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Global Allocation Fund 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?**

$ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☐ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Global Allocation Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(*H«
1024Email:20040800000000010

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Global Allocation Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 2:42:13 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Global Allocation Fund

VN: 4B4A58863D3E29D71E38004EA5BC073E

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 13

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Opportunistic Credit Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Opportunistic Credit Fund 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Opportunistic Credit Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(=¥«
1024Email20040800000000020

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Opportunistic Credit Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:17:51 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Opportunistic Credit Fund

VN: DE443EACFF0C50DF7840C417F8838751

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 14

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Tax-Exempt Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Tax-Exempt Fund
   Highland Energy MLP Fund
   300 Crescent Court, Ste 700
   Dallas, Texas 75201

   Contact phone
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Tax-Exempt Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(:h«
1024Email20040800000000027

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Tax-Exempt Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:13:36 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Tax-Exempt Fund

VN: 9B3D94E34D67930ECFE8B81B1F1DBDD3

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 15

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Highland Energy MLP Fund
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Energy MLP Fund 300 Crescent Court, Ste 700 Dallas, Texas 75201	
Contact phone	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s//s/ Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Frank George Waterhouse
First name Middle name Last name

Title Authorized Agent

Company Highland Energy MLP Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(+V«
1024Email:20040800000000011

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Energy MLP Fund
300 Crescent Court, Ste 700
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
/s/ Frank George Waterhouse on 08-Apr-2020 2:45:38 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Energy MLP Fund

VN: 2B6FB1B01A1E9BD4C0AC42B574DE15CB

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 16

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

NexPoint Strategic Opportunities Fund
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Strategic Opportunities Fund Highland Energy MLP Fund 300 Crescent Court, Ste 700 Dallas, Texas 75201	
Contact phone	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Strategic Opportunities Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(>+«
1024[illegible]20040800000000030

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Strategic Opportunities Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:21:54 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Strategic Opportunities Fund

VN: 3A2F7080AE20AE057754297B8F0239AC

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 17

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Advisors, L.P. 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 9726284100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name | Middle name | Last name

Title: Authorized Agent

Company: NexPoint Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(8>«
1024[illegible]20040800000000024

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Advisors, L.P.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
9726284100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:10:15 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Advisors, L.P.

VN: 6C8395AA0824240A25281D3F44E9D6CB

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. ("Claimant") pursuant to a Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018. Pursuant to these agreements, Claimant has previously made payments for the Debtor and under the Expense Reimbursement Agreement is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of these reimbursement agreements is attached hereto.

PAYROLL REIMBURSEMENT AGREEMENT

THIS PAYROLL REIMBURSEMENT AGREEMENT (this "***Agreement***") entered into on this 1st day of May, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and NexPoint Advisors, L.P., a Delaware limited partnership ("***NexPoint***"), and any affiliate of NexPoint that becomes a party hereto, is effective as of January 1, 2018 (the "***Effective Date***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will seek reimbursement from NexPoint for the cost of certain employees who are dual employees of HCMLP and NexPoint and who provide advice to registered investment companies advised by NexPoint under the direction and supervision of NexPoint as more fully described in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $252,000 per month.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 3.01.

"***Dual Employee***" has the meaning set forth in Section 2.01.

"***Effective Date***" has the meaning set forth in the preamble.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services

and the Shared Assets identified and authorized by applicable tariffs.

ARTICLE II
EMPLOYEE REIMBURSEMENT

Section 2.01 Employee Reimbursement. During the Term, NexPoint shall reimburse HCMLP for the Actual Cost to HCMLP of certain employees who (i) are dual employees of HCMLP and NexPoint and (ii) provide advice to any investment company registered under the Investment Company Act of 1940, as amended (the "***1940 Act***") pursuant to an investment advisory agreement between NexPoint and such investment company (each, a "***Fund***") under the direction and supervision of NexPoint (each, a "***Dual Employee***").

Section 2.02 Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of NexPoint's reimbursement in order to reflect new procedures or processes, including modifying the Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification.

ARTICLE III
COST ALLOCATION

Section 3.01 Actual Cost Allocation Formula. The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on NexPoint matters, as listed on Exhibit A.

ARTICLE IV
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 4.01 Settlement Payments. At any time during the Term, NexPoint may make payment of the amounts that are allocable to it.

Section 4.02 Determination and Payment of Cost. NexPoint shall promptly make payment of the Actual Cost within ten (10) days of the end of each calendar month. Should either Party determine that a change to employee reimbursement is appropriate, as set forth in Section 2.02, the Party requesting the modification shall notify the other Party on or before the last business day of the calendar month.

Section 4.03 Taxes.

(a) NexPoint is responsible for and will pay all Taxes applicable to it, provided, that such payments by NexPoint to HCMLP will be made in the most tax-efficient manner and provided further, that HCMLP will not be subject to any liability for Taxes applicable to the cost of a Dual Employee of NexPointas a result of such payment by NexPoint. HCMLP will collect such Tax from NexPoint in the same manner it collects such Taxes from other customers in the ordinary course of its business, but in no event prior to the time it invoices NexPoint for costs for which such Taxes are levied. NexPoint may provide HCMLP with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) NexPoint will reimburse HCMLP for any Taxes collected from HCMLP and refunded to NexPoint. In the event a Tax is assessed against NexPoint that is solely the responsibility of HCMLP and HCMLP desires to protest such assessment, HCMLP will submit to NexPoint a statement of

the issues and arguments requesting that NexPoint grant HCMLP the authority to prosecute the protest in NexPoint's name. NexPoint's authorization will not be unreasonably withheld. HCMLP will finance, manage, control and determine the strategy for such protest while keeping NexPoint reasonably informed of the proceedings. However, the authorization will be periodically reviewed by NexPoint to determine any adverse impact on NexPoint, and NexPoint will have the right to reasonably withdraw such authority at any time. Upon notice by NexPoint that it is so withdrawing such authority, HCMLP will expeditiously terminate all proceedings. Any adverse consequences suffered by HCMLP as a result of the withdrawal will be submitted to litigation pursuant to Section 6.14. Any contest for Taxes brought by HCMLP may not result in any lien attaching to any property or rights of NexPoint or otherwise jeopardize NexPoint's interests or rights in any of its property.

(c) The provisions of this Section 4.03 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 5.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
MISCELLANEOUS

Section 6.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or NexPoint or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. Neither Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever.

Section 6.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 6.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 6.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 6.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 6.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 6.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 6.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to NexPoint, addressed to:

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 6.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 6.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 6.14 Dispute Resolution; Jurisdiction. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, including, but not limited to, claims sounding in contract, equity, tort, fraud and statute ("Dispute") shall be submitted exclusively to the the courts located in Dallas County, Texas, and any appellate court thereof ("Enforcement Court"). Each party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including, but not limited to, administrative, arbitration, or litigation, other than the Enforcement Court.

Section 6.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name:_____
Title:_____

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:_____
Title:_____

EXHIBIT A

EMPLOYEE ALLOCATIONS
(AS OF JANUARY 1, 2018)

EMPLOYEE NAME	PERCENTAGE (%) ALLOCATION TO NEXPOINT ADVISORS, L.P.
Abayarathna, Sahan	9%
Baynard, Cameron	9%
Burns, Nathan	70%
Covitz, Hunter	25%
Desai, Neil	25%
Fedoryshyn, Eric	9%
Gray, Matthew	9%
Hayes, Christopher	9%
Hill, Robert	5%
McFarling, Brandon	9%
Moore, Carl	10%
Nikolayev, Yegor	9%
Okada, Mark	20%
Owens, David	9%
Parker, Trey	15%
Parmentier, Andrew	40%
Phillips, Michael	9%
Poglitsch, Jon	10%
Ryder, Phillip	5%
Sachdev, Kunal	9%
Smallwood, Allan	9%
Staltari, Mauro	9%
Tomlin, Jake	9%
Vira, Sagar	9%
Wilson, Scott	5%

AMENDMENT NUMBER ONE
TO
PAYROLL REIMBURSEMENT AGREEMENT

This Amendment Number One (this "***Amendment***") to the Payroll Reimbursement Agreement (the "***Agreement***") is entered into on December 14, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***") and NexPoint Advisors, L.P., a Delaware limited partnership ("***NexPoint***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***". Capitalized terms not defined herein shall have the meaning seet forth in the Agreement.

WHEREAS, HCMLP and NexPoint entered into the Agreement on May 1, 2018 to facilitate NexPoint's reimbursement to HCMLP for the cost of certain employees who are dual employees of HCMLP and NexPoint; and

WHEREAS, HCMLP and NexPoint now desire to amend the Agreement to capture a one time payment of estimated additional Actual Costs owed to HCMLP for additional resources used by NexPoint during the Term of the Agreement.

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

1. Payment of Additional Cost. In accordance with Section 2.02 of the Agreement (Changes to Employee Reimbursement), NexPoint hereby agrees to pay $1,300,000.00 to HCMLP, representing an estimate of additional Actual Costs owed under the Agreement for additional resources used by NexPoint (the "***Additional Actual Cost***"). NexPoint shall make payment of the Additional Actual Cost within ten (10) days of the date of this Agreement.

2. Ratification of Agreement. Except as expressly amended and provided herein, all of the terms, conditions and provisions of the Agreement are hereby ratified and confirmed to be of full force and effect, and shall continue in full force and effect.

3. Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

4. Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS HEREOF, each of the Parties has caused this Amendment to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name:_____
Title:_____

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:_____
Title:_____

EXHIBIT 18

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Income Fund HFRO
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Income Fund HFRO 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?**

$ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☐ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Income Fund HFRO
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(.d«
1024Email:20040800000000012

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Income Fund HFRO
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 2:49:53 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Income Fund HFRO

VN: 494F44921243399835CCE68CA6EAE875

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 19

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Funds I
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Funds I 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Funds I
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(.i«
1024Email:20040800000000014

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Funds I
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 2:53:28 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Funds I

VN: 77A9A107A11BC0CDB5F01B56AA97B87B

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 20

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Capital, Inc.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Capital, Inc. 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 9726284100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Capital, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4
1024[illegible]20040800000000032

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Capital, Inc.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
9726284100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:23:50 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Capital, Inc.

VN: D4A7D128BEA0EFCEBDE7DC7BDE82620B

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 21

Claim #108 Date Filed: 4/8/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Advisors, L.P. 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 9726284100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(:Z«
1024[illegible]20040800000000026

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Advisors, L.P.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
9726284100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:13:31 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Advisors, L.P.

VN: 28F8A7733784378B7A001DD7D2147881

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. ("Claimant") pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018 and the Sub-Advisory Agreement dated to be effective as of June 1, 2018. Claimant has previously incurred and paid for obligations under both agreements and is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of these agreements is attached hereto.

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the staff and services provider hereunder (in such capacity, the "Staff and Services Provider" and together with the Management Company, the "Parties").

RECITALS

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act");

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the "Original Agreement");

WHEREAS, the Parties desire to amend and restated the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a "Shared Employee"), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Applicable Asset Criteria and Concentrations" means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Client or Account" shall mean any fund, client or account advised by the Management Company, as applicable.

"Covered Person" shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Indebtedness" shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers' acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

"Operating Guidelines" means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

"Portfolio" means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

"Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive (unless preceded by "either") and "include" and "including" are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) "writing", "written" and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) "hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of $168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance; Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records; Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit or and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

or to such other address or email address as shall have been notified to the other Parties.

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IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

SUB-ADVISORY AGREEMENT

This Sub-Advisory Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the sub-advisor hereunder (in such capacity, the "Sub-Advisor" and together with the Management Company, the "Parties").

WHEREAS, the Management Company from time to time has entered and will enter into portfolio management agreements, investment management agreements and/or similar agreements (each such agreement as amended, modified, waived, supplemented or restated, subject in each case to the requirements of Section 8, a "Management Agreement") and related indentures, credit agreements, collateral administration agreements, service agreements or other agreements (each such agreement as amended, modified, waived, supplemented or restated, subject in each case to the requirements of Section 8, a "Related Agreement"), in each case as set forth on Appendix A hereto, as amended from time to time, pursuant to which the Management Company has agreed to provide portfolio and/or investment management services to certain funds and accounts (any such fund or account, an "Account", and the assets comprising the portfolio of such Account, a "Portfolio"); and

WHEREAS, the Management Company and the Sub-Advisor desire to enter into this Agreement in order to permit the Sub-Advisor to provide certain limited services to assist the Management Company in performing certain obligations under the Management Agreements and Related Agreements.

NOW, THEREFORE, in consideration of the foregoing recitals, and the receipt of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows.

1. Appointment; Limited Scope of Services.

(a) Highland is hereby appointed as Sub-Advisor to the Management Company for the purpose of assisting the Management Company in managing the Portfolios of each Account pursuant to the related Management Agreement and Related Agreements, in each case that have been included in the scope of this Agreement pursuant to the provisions of Section 8, subject to the terms set forth herein and subject to the supervision of the Management Company, and Highland hereby accepts such appointment.

(b) Without limiting the generality of the foregoing, the Sub-Advisor shall, during the term and subject to the provisions of this Agreement:

(i) make recommendations to the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account as to the general composition and allocation of the Portfolio with respect to such Account among various types of securities, the nature and timing of the changes therein and the manner of implementing such changes,

including recommendations as to the specific assets to be purchased, retained or sold by any such Account;

(ii) place orders with respect to, and arrange for, any investment by or on behalf of such Account (including executing and delivering all documents relating to such Account's investments on behalf of such Account or the Management Company, as applicable), upon receiving a proper instruction from the Management Company;

(iii) identify, evaluate and recommend to the Management Company, in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account, and, if applicable, negotiate the structure and/or terms of investment opportunities within the specific investment strategy of the Management Company for such Account;

(iv) assist the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account in performing due diligence on prospective Portfolio investments by such Account;

(v) provide information to the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account regarding any investments to facilitate the monitoring and servicing of such investments and, if requested by the Management Company, provide information to assist in monitoring and servicing other investments by such Account;

(vi) assist and advise the Management Company in its capacity as portfolio manager, investment manager or any similar capacity for any applicable Account with respect to credit functions including, but not limited to, credit analysis and market research and analysis; and

(vii) assist the Management Company in performing any of its other obligations or duties as portfolio manager, investment manager or any similar capacity for any applicable Account.

The foregoing responsibilities and obligations are collectively referred to herein as the "Services."

Notwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, the Management Company. Furthermore, the parties acknowledge and agree that the Sub-Advisor shall be required to provide only the services expressly described in this Section 1(b), and shall have no responsibility hereunder to provide any other services to the Management Company, including, but not limited to, administrative, management or similar services.

(c) The Sub-Advisor agrees during the term hereof to furnish the Services on the terms and conditions set forth herein and subject to the limitations contained herein. The Sub-Advisor agrees that, in performing the Services, it will comply with all applicable obligations of the Management Company set forth in the Management Agreements and the Related Agreements.

In addition, with respect to any obligation that would be part of the Services but for the fact that the relevant Management Agreement or Related Agreement does not permit such obligation to be delegated by the Management Company to the Sub-Advisor, the Sub-Advisor, upon request in writing by the Management Company, shall work in good faith with the Management Company and shall use commercially reasonable efforts to assist the Management Company in satisfying all such obligations.

2. Compensation.

(a) As compensation for its performance of its obligations as Sub-Advisor under this Agreement, the Sub-Advisor will be entitled to receive a monthly fee in the amount of Two Hundred Fifty-Two Thousand and 00/100 Dollars ($252,000.00) (the "Sub-Advisory Fee"). The Sub-Advisory Fee shall be payable monthly in advance.

(b) Each party shall bear its own expenses.

(c) Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any and all amounts payable to the Sub-Advisor pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

3. Representations and Warranties.

(a) Each of the Management Company and the Sub-Advisor represents and warrants, as to itself only, that:

(i) it has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(ii) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(iii) no consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person or entity is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(iv) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (A) its constituting and organizational documents; (B) the terms of any material indenture, contract,

lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound; (C) any statute applicable to it; or (D) any law, decree, order, rule or regulation applicable to it of any court or regulatory, administrative or governmental agency, body of authority or arbitration having or asserting jurisdiction over it or its properties, which, in the case of clauses (B) through (D) above, would have a material adverse effect upon the performance of its duties hereunder.

(b) The Sub-Advisor represents and warrants to the Management Company that it is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act").

(c) The Management Company acknowledges that it has received Part 2 of the Sub-Advisor's Form ADV filed with the Securities and Exchange Commission. The Sub-Advisor will provide to the Management Company an updated copy of Part 2 of its Form ADV promptly upon any amendment to such Form ADV being filed with the Securities and Exchange Commission.

4. Standard of Care; Liability; Indemnification.

(a) Sub-Advisor Standard of Care. Subject to the terms and provisions of this Agreement, the Management Agreements and/or the Related Agreements, as applicable, the Sub-Advisor will perform its obligations hereunder and under the Management Agreements and/or the Related Agreements in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios, in each case except as expressly provided otherwise under this Agreement, the Management Agreements and/or the Related Agreements. To the extent not inconsistent with the foregoing, the Sub-Advisor will follow its customary standards, policies and procedures in performing its duties hereunder, under the Management Agreements and/or under the Related Agreements.

(b) Exculpation. To the fullest extent permitted by law, none of the Sub-Advisor, any of its affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)) (each a "Covered Person") will be liable to the Management Company, any Member, any shareholder, partner or member thereof, any Account (or any other adviser, agent or representative thereof), or to any holder of notes, securities or other indebtedness issued by any Account (collectively, the "Management Company Related Parties"), for (i) any acts or omissions by such Covered Person arising out of or in connection with the provision of the Services hereunder, for any losses that may be sustained in the purchase, holding or sale of any security or debt obligation by any Account, or as a result of any activities of the Sub-Advisor, the Management Company or any other adviser to or agent of the Account or

any other sub-advisor appointed by the Management Company to provide portfolio management services to any other delegatee of the Management Company or any other person or entity, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of the Sub-Advisor, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of the Sub-Advisor with reasonable care, or (iii) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to any Management Company Related Party, no Covered Person acting under this Agreement shall be liable to such Management Company Related Party for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 4(b) shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to any Management Company Related Party solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to any such Management Company Related Party, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to any Management Company Related Party in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

(c) Indemnification. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, whether currently existing or accruing in the future ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the Services, the activities of the Management Company Related Parties, or activities undertaken in connection with the Management Company Related Parties, or otherwise relating to or arising out of this Agreement, any Management Agreement and/or the Related Documents, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"),

whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 4(c) regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 4(c) shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 4(c) to the fullest extent permitted by law

(d) Other Sources of Recovery etc. The indemnification rights set forth in Section 4(c) are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any Account has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained

(e) Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 4(c) shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person

(f) Reliance. A Covered Person shall incur no liability to any Management Company Related Party in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

(g) Rights Under Management Agreements and Related Agreements. The Management Company will ensure that the Sub-Advisor is provided substantially similar indemnification and exculpation rights as are afforded to the Management Company in its role as portfolio manager under any future Management Agreement or Related Agreement encompassed within the Services hereunder, and it is expressly acknowledged by the Parties that the Sub-Advisor may not consent to including a Management Agreement and Related Agreements within the scope of this Agreement pursuant to Section 8 if such indemnification and exculpation rights are not reasonably acceptable to it.

5. Limitations on Employment of the Sub-Advisor; Conflicts of Interest.

(a) The services of the Sub-Advisor to the Management Company are not exclusive, and the Sub-Advisor may engage in any other business or render similar or different services to others including, without limitation, the direct or indirect sponsorship or management of other transactions, investment-based accounts or commingled pools of capital, however structured, having investment objectives similar to those of the Management Company or the Accounts. Moreover, nothing in this Agreement shall limit or restrict the right of any manager, partner, officer or employee of the Sub-Advisor to engage in any other business or to devote his or her time and attention in part to any other business, whether of a similar or dissimilar nature to the Management Company or any Account, or to receive any fees or compensation in connection therewith.

(b) So long as this Agreement or any extension, renewal or amendment of this Agreement remains in effect, the Sub-Advisor shall be the only portfolio management sub-advisor for the Management Company. The Sub-Advisor assumes no responsibility under this Agreement other than to render the services called for hereunder. It is understood that directors, officers, employees, members and managers of the Management Company are or may become interested in the Sub-Advisor and its Affiliates as directors, officers, employees, partners, stockholders, members, managers or otherwise, and that the Sub-Advisor and directors, officers, employees, partners, stockholders, members and managers of the Sub-Advisor and its Affiliates are or may become similarly interested in the Management Company as members or otherwise.

(c) The Management Company acknowledges that various potential and actual conflicts of interest may exist with respect to the Sub-Advisor as described in the Sub-Advisor's Form ADV Part 2A and as described in Appendix B hereto, and the Management Company expressly acknowledges and agrees to the provisions contained in such Appendix B, as amended from time to time with mutual consent of the Parties.

6. Termination; Survival.

(a) This Agreement may be terminated, in its entirety or with respect to any Management Agreement, at any time without payment of penalty, by the Management Company upon 30 days' prior written notice to the Sub-Advisor.

(b) This Agreement shall terminate automatically with respect to any Management Agreement on the date on which (i) such Management Agreement has been terminated (and, if required thereunder, a successor portfolio manager has been appointed and accepted) or discharged; or (ii) the Management Company is no longer acting as portfolio manager, investment manager or in a similar capacity (whether due to removal, resignation or assignment) under such Management Agreement and the Related Agreements. Upon the termination of this Agreement with respect to any Management Agreement the Management Company shall provide prompt notice thereof to the Sub-Advisor, and Appendix A hereto shall be deemed to be amended by deleting such Management Agreement and the Related Agreements related thereto.

(c) All accrued and unpaid financial and indemnification obligations with respect to any conduct or events occurring prior to the effective date of the termination of this Agreement shall survive the termination of this Agreement.

7. Cooperation with Management Company. The Sub-Advisor shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Sub-Advisor. Specifically, the Sub-Advisor agrees that it will provide the Management Company with reasonable access to information relating to the performance of Sub-Advisor's obligations under this Agreement.

8. Management Agreements and Related Agreements. The Sub-Advisor's duty to provide Services in connection with any Management Agreement shall not commence until (a) Appendix A to this Agreement has been amended by mutual agreement of the Parties to include such Management Agreement and the related Account, fund and/or account and Related Agreements and (b) the Sub-Advisor acknowledges receipt of such Management Agreement and each Related Agreement. The Sub-Advisor shall not be bound to comply with any amendment, modification, supplement or waiver to any Management Agreement or any Related Agreement until it has received a copy thereof from the Management Company. No amendment, modification, supplement or waiver to any Management Agreement or Related Agreement that, when applied to the obligations and rights of the Management Company under such Management Agreement or Related Agreement, affects (i) the obligations or rights of the Sub-Advisor hereunder; (ii) the amount of priority of any fees or other amounts payable to the Sub-Advisor hereunder; or (iii) any definitions relating to the matters covered in clause (i) or (ii) above, will apply to the Sub-Advisor under this Agreement unless in each such case the Sub-Advisor has consented thereto in writing (such consent not to be unreasonably withheld or delayed unless the Sub-Advisor determines in its reasonable judgment that such amendment, modification, supplement or waiver could have a material adverse effect on the Sub-Advisor).

9. Amendments; Assignments.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 9, without the prior written consent of the other Party and (ii) in accordance with the Advisers Act and other applicable law.

(b) Except as otherwise provided in this Section 9, the Sub-Advisor may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with the Advisers Act and other applicable law.

(c) The Sub-Advisor may, without satisfying any of the conditions of Section 9(a) other than clause (ii) thereof (so long as such assignment does not constitute an assignment within the meaning of Section 202(a)(1) of the Advisers Act), (1) assign any of its rights or obligations under this Agreement to an affiliate; *provided* that such affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Sub-Advisor pursuant to this Agreement and (ii) has the legal right and capacity to act as Sub-Advisor under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Sub-Advisor under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Sub-Advisor in another corporate or similar form and has substantially the same staff; provided, further, that the Sub-Advisor shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Sub-Advisor will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

10. Advisory Restrictions. This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any Management Agreement or any part thereof. It is the express intention of the parties hereto that (i) the Services are limited in scope; and (ii) this Agreement complies in all respects with all applicable (A) contractual provisions and restrictions contained in each Management Agreement and each Related Agreement and (B) laws, rules and regulations (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the Services to be provided under this Agreement shall automatically without action by any person or entity be limited, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

11. Records; Confidentiality.

(a) The Sub-Advisor shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon

not less than three (3) Business Days' prior notice; provided, that the Sub-Advisor shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

(b) The Sub-Advisor shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Sub-Advisor hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its rating of notes issued by an Account or supplying credit estimates on any obligation included in the Portfolios, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Account for which the Management Company serves as portfolio manager, (iv) as required by (A) applicable law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Sub-Advisor or any of its affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Sub-Advisor on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Sub-Advisor may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any transaction, or (ix) information relating to performance of the Portfolios as may be used by the Sub-Advisor in the ordinary course of its business. Notwithstanding the foregoing, it is agreed that the Sub-Advisor may disclose without the consent of any Person (1) that it is serving as Sub-Advisor to the Management Company and each Account, (2) the nature, aggregate principal amount and overall performance of the Portfolios, (3) the amount of earnings on the Portfolios, (4) such other information about the Management Company, the Portfolios as is customarily disclosed by Sub-Advisors to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Sub-Advisor, the Management Company, the Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

12. Notice. Any notice or demand to any party to this Agreement to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail, facsimile or email transmission or by delivering it by hand as follows (or to such other address, email address or facsimile number as shall have been notified to the other parties hereto):

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Sub-Advisor:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

15. Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties.

16. No Waiver. The performance of any condition or obligation imposed upon any party hereunder may be waived only upon the written consent of the parties hereto. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other party under this Agreement. Any failure by any party to this Agreement to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

18. Third Party Beneficiaries. Nothing in this Agreement will be construed to give any person or entity other than the parties to this Agreement, the Accounts and any person or entity with indemnification rights hereunder any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. Except as provided in the foregoing sentence, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

19. No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the parties. Except as expressly provided herein or in any other written agreement between the parties, no party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other party.

20. Entire Agreement. This Agreement, together with each Management Agreement and Related Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to such subject matter.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as the Sub-Advisor

By: Strand Advisors, Inc., its General Partner

By: _____
Name: Frank Waterhouse
Title: Treasurer

NEXPOINT ADVISORS, L.P.,
as the Management Company

By: NexPoint Advisors GP, LLC, its General Partner

By: _____
Name: Frank Waterhouse
Title: Treasurer

Appendix A

Fund or Account	Management Agreement	Related Agreements	Date of Management Agreement
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

APPENDIX B

Purchase and Sale Transactions; Brokerage

The Management Company acknowledges and agrees that the Sub-Advisor or any of its affiliates may acquire or sell obligations or securities, for its own account or for the accounts of its clients, without either requiring or precluding the acquisition or sale of such obligations or securities for the account of any Account. Such investments may be the same or different from those made by or on behalf of the Management Company or the Accounts.

Additional Activities of the Sub-Advisor

Nothing herein shall prevent the Sub-Advisor or any of its clients, its partners, its members, funds or other investment accounts managed by it or any of its affiliates, or their employees and their affiliates (collectively, the "Related Entities"), from engaging in other businesses, or from rendering services of any kind to the Management Company, its affiliates, any Account or any other Person or entity regardless of whether such business is in competition with the Management Company, its affiliates, such Account or otherwise. Without limiting the generality of the Sub-Advisor and its Related Entities may:

(a) serve as managers or directors (whether supervisory or managing), officers, employees, partners, agents, nominees or signatories for the Management Company or any affiliate thereof, or for any obligor or issuer in respect of any of the Portfolio assets or any affiliate thereof, to the extent permitted by their respective organizational documents and underlying instruments, as from time to time amended, or by any resolutions duly adopted by the Management Company, any Account, their respective affiliates or any obligor or issuer in respect of any of the Portfolio assets (or any affiliate thereof) pursuant to their respective organizational documents;

(b) receive fees for services of whatever nature rendered to the obligor or issuer in respect of any of the Portfolio Assets or any affiliate thereof;

(c) be retained to provide services unrelated to this Agreement to the Management Company, any Account or their respective affiliates and be paid therefor, on an arm's-length basis;

(d) be a secured or unsecured creditor of, or hold a debt obligation of or equity interest in, the Management Company, any Account or any affiliate thereof or any obligor or issuer of any Portfolio asset or any affiliate thereof;

(e) sell any Portfolio asset to, or purchase or acquire any Portfolio asset from, any Account while acting in the capacity of principal or agent; *provided, however*, that any such sale or purchase effected by the Sub-Advisor shall be subject to applicable law and any applicable provisions of this Agreement, the related Management Agreement and Related Agreements, as applicable;

(f) underwrite, arrange, structure, originate, syndicate, act as a distributor of or make a market in any Portfolio asset;

(g) serve as a member of any "creditors' board", "creditors' committee" or similar creditor group with respect to any Portfolio asset; or

(h) act as portfolio manager, portfolio manager, investment manager and/or investment adviser or sub-advisor in collateralized bond obligation vehicles, collateralized loan obligation vehicles and other similar warehousing, financing or other investment vehicles.

As a result, such individuals may possess information relating to obligors and issuers of Portfolio assets that is (a) not known to or (b) known but restricted as to its use by the individuals at the Sub-Advisor responsible for monitoring the Portfolio assets and performing the Services under this Agreement. Each of such ownership and other relationships may result in securities laws restrictions on Transactions in such securities by the Management Company and/or any Account and otherwise create conflicts of interest for the Management Company and/or any Account. The Management Company acknowledges and agrees that, in all such instances, the Sub-Advisor and its affiliates may in their discretion make investment recommendations and decisions that may be the same as or different from those made by the Management Company with respect to the investments of any Account and they have no duty, in making or managing such investments, to act in a way that is favorable to any Account.

The Management Company acknowledges that there are generally no ethical screens or information barriers between the Sub-Advisor and certain of its affiliates of the type that many firms implement to separate Persons who make investment decisions from others who might possess applicable material, non-public information that could influence such decisions. The officers or affiliates of the Sub-Advisor may possess information relating to obligors or issuers of Portfolio Assets that is not known to the individuals at the Sub-Advisor responsible for providing the Services under this Agreement. As a result, the Sub-Advisor may from time to time come into possession of material nonpublic information that limits the ability of the Sub-Advisor to effect a Transaction for the Management Company and/or any Account, and the Management Company and/or such Account's investments may be constrained as a consequence of the Sub-Advisor's inability to use such information for advisory purposes or otherwise to effect Transactions that otherwise may have been initiated on behalf of its clients, including the Management Company and/or such Account.

Unless the Sub-Advisor determines in its sole discretion that a Portfolio investment complies with the conflicts of interest provisions set forth in the applicable Management Agreement and Related Agreements, the Sub-Advisor will not direct any Account to acquire or sell loans or securities entered into or issued by (i) Persons of which the Sub-Advisor, any of its affiliates or any of its officers, directors or employees are directors or officers, (ii) Persons of which the Sub-Advisor or any of its respective affiliates act as principal or (iii) Persons about which the Sub-Advisor or any of its affiliates have material non-public information which the Sub-Advisor deems would prohibit it from advising as to the trading of such securities in accordance with applicable law.

It is understood that the Sub-Advisor and any of its affiliates may engage in any other business and furnish investment management and advisory services to others, including Persons which may have investment policies similar to those followed by the Management Company with respect to the Portfolio assets and which may own securities or obligations of the same class, or which are of the same type, as the Portfolio assets or other securities or obligations of the obligors or issuers of the Portfolio assets. The Sub-Advisor and its affiliates will be free, in their sole discretion, to

make recommendations to others, or effect Transactions on behalf of themselves or for others, which may be the same as or different from those effected with respect to the Collateral. Nothing in this Agreement, in the Management Agreements or in the Related Agreements shall prevent the Sub-Advisor or any of its affiliates, acting either as principal or agent on behalf of others, from buying or selling, or from recommending to or directing any other account to buy or sell, at any time, securities or obligations of the same kind or class, or securities or obligations of a different kind or class of the same obligor or issuer, as those directed by the Sub-Advisor to be purchased or sold on behalf of an Account. It is understood that, to the extent permitted by applicable law, the Sub-Advisor, its Related Entities, or any of their owners, directors, managers, officers, stockholders, members, partners, partnership committee members, employees, agents or affiliates or the other Covered Persons or any member of their families or a Person or entity advised by the Sub-Advisor may have an interest in a particular transaction or in securities or obligations of the same kind or class, or securities or obligations of a different kind or class of the same issuer, as those that may be owned or acquired by an Account. The Management Company agrees that, in the course of providing the Services, the Sub-Advisor may consider its relationships with other clients (including obligors and issuers) and its affiliates.

The Management Company agrees that neither the Sub-Advisor nor any of its affiliates is under any obligation to offer any investment opportunity of which they become aware to the Management Company or any Account or to account to the Management Company or any Account for (or share with the Management Company or any Account or inform the Management Company or any Account of) any such transaction or any benefit received by them from any such transaction. The Management Company understands that the Sub-Advisor and/or its affiliates may have, for their own accounts or for the accounts of others, portfolios with substantially the same portfolio criteria as are applicable to the Accounts. Furthermore, the Sub-Advisor and/or its affiliates may make an investment on behalf of any client or on their own behalf without offering the investment opportunity or making any investment on behalf of the Management Company or any Account and, accordingly, investment opportunities may not be allocated among all such clients. The Management Company acknowledges that affirmative obligations may arise in the future, whereby the Sub-Advisor and/or its affiliates are obligated to offer certain investments to clients before or without the Sub-Advisor offering those investments to the Management Company or any Account.

The Management Company acknowledges that the Sub-Advisor and its affiliates may make and/or hold investments in an obligor's or issuer's obligations or securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor's or issuer's obligations or securities made and/or held by the Management Company or any Account, or in which partners, security holders, members, officers, directors, agents or employees of the Sub-Advisor and its affiliates serve on boards of directors, or otherwise have ongoing relationships or otherwise have interests different from or adverse to those of the Management Company and the Accounts.

Defined Terms

For purposes of this Appendix B, the following defined terms shall have the meanings set forth below:

"Portfolio" shall mean, with respect to any Account, the assets held by or in the name of the Account or any subsidiary of the Account in respect of such Transaction, whether or not for the benefit of the related secured parties, securing the obligations of such Account.

"Transaction" shall mean any action taken by the Sub-Advisor on behalf of any Account with respect to the Portfolio, including, without limitation, (i) selecting the Portfolio assets to be acquired by the Account, (ii) investing and reinvesting the Portfolio, (iii) amending, waiving and/or taking any other action commensurate with managing the Portfolio and (iv) instructing the Account with respect to any acquisition, disposition or tender of a Portfolio asset or other assets received in respect thereof in the open market or otherwise by the Account.

EXHIBIT 22

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Fixed Income Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Fixed Income Fund
   Highland Energy MLP Fund
   300 Crescent Court, Ste 700
   Dallas, Texas 75201

   Contact phone
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s//s/ Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Frank George Waterhouse
First name Middle name Last name

Title Authorized Agent

Company Highland Fixed Income Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(/'«
1024Email:20040800000000015

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Fixed Income Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
/s/ Frank George Waterhouse on 08-Apr-2020 2:56:13 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Fixed Income Fund

VN: 699AD36630DB0AE5A6E56A910C659B7D

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 23

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Eagle Equity Advisors, LLC
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Eagle Equity Advisors, LLC 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Eagle Equity Advisors, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024[illegible]20040800000000033

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Eagle Equity Advisors, LLC
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:26:07 p.m. Eastern Time
Title:
Authorized Agent
Company:
Eagle Equity Advisors, LLC

VN: F3B707BBC34FCDA6D5A2D7F8E13E2F44

Exhibit A

Eagle Equity Advisors, LLC ("Claimant") is a wholly-owned subsidiary of NexPoint Insurance Distributors, LLC ("NID") which is a wholly-owned subsidiary of the Debtor. It is a newly formed start-up venture designed to provide distribution services to The Ohio State Life Insurance Company ("OSLIC"). The Claimant believes NID and/or the Debtor may be required to provide funding to the Claimant or, potentially, to relinquish its equity rights in Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 24

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Advisors Equity Group, LLC
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Advisors Equity Group, LLC 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☐ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Advisors Equity Group, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024Email20040800000000035

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Advisors Equity Group, LLC
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:28:42 p.m. Eastern Time
Title:
Authorized Agent
Company:
Advisors Equity Group, LLC

VN: 7C239B0F50072F98A8C0268AF49CD2DF

Exhibit A

Advisors Equity Group, LLC ("Claimant") is a newly formed start-up joint venture that is owned by NexPoint Insurance Distributors, LLC ("NID") and third parties. NID is a wholly-owned subsidiary of the Debtor. NID has an ownership interest in and revenue share rights with respect to Claimant. Claimant and NID also entered into a multi-draw promissory note pursuant to which NID agreed to fund up to $1.5 million to Claimant. Despite this commitment, however, no funds have been advanced by NID to date. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 25

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Long/Short Equity Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Long/Short Equity Fund
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone 972-628-4100
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Long/Short Equity Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(05«
1024[illegible]20040800000000016

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Long/Short Equity Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 2:57:06 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Long/Short Equity Fund

VN: 023DAC6E4CA5B42E1D381C4DC004C6C2

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 26

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 9726284100	Contact phone
Contact email gscott@myersbigel.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name | Middle name | Last name

Title: Trustee

Company: The Dugaboy Investment Trust, as successor-in-interest to the Canis Maj
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(D..«
1024Email20040800000000036

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:
9726284100

Phone 2:

Fax:

Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:30:08 p.m. Eastern Time

Title:
Trustee

Company:
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust

VN: FBB33338EF4660051FAD68A4EA09DB18

Exhibit A

The Dugaboy Investment Trust, as successor-in-interest to The Canis Major Trust ("Claimant"), is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 27

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Funds II
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Funds II 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name | Middle name | Last name

Title: Authorized Agent

Company: Highland Funds II
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(?9«
1024[illegible]20040800000000031

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Funds II
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:22:37 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Funds II

VN: 0DBC74CB0325D614A7D5A8F93A2741A1

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 28

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Socially Responsible Equity Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone _____	Contact phone _____
Contact email See summary page	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
_____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s//s/ Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Frank George Waterhouse
First name Middle name Last name

Title Authorized Agent

Company Highland Socially Responsible Equity Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4
1024Email20040800000000017

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Socially Responsible Equity Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
/s/ Frank George Waterhouse on 08-Apr-2020 3:01:12 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Socially Responsible Equity Fund

VN: 272FE10FA2A6FDC863181173307228B0

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 29

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Healthcare Opportunities Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Healthcare Opportunities Fund
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone 972-628-4100
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone ____
   Contact email ____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   ____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Healthcare Opportunities Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024Email:20040800000000018

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Healthcare Opportunities Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:01:18 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Healthcare Opportunities Fund

VN: CBB49D6F9904C041E09961B5B5A08D7C

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 30

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Discount Strategies Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   NexPoint Discount Strategies Fund
   Highland Energy MLP Fund
   300 Crescent Court, Ste 700
   Dallas, Texas 75201

   Contact phone _____
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone _____
   Contact email _____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Discount Strategies Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(F4«
1024Email20040800000000038

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Discount Strategies Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:35:36 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Discount Strategies Fund

VN: 51719AB33B0752A75A3C88060A8CEBB0

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 31

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

NexPoint Real Estate Strategies Fund
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Real Estate Strategies Fund Highland Energy MLP Fund 300 Crescent Court, Ste 700 Dallas, Texas 75201	
Contact phone	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Real Estate Strategies Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(Bc«
1024Email20040800000000034

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Real Estate Strategies Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:26:09 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Real Estate Strategies Fund

VN: A0B34AB7A92B4C1DD7A56CC9991AA3BA

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 32

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   Highland Capital Management Fund Advisors, L.P.
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

   ☑ No

   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 9726284100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

   ☑ No

   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ☑ No

   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Capital Management Fund Advisors, L.P.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(3 «
1024Email:20040800000000010

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Capital Management Fund Advisors, L.P.
Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:
9726284100
Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:02:32 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Capital Management Fund Advisors, L.P.

VN: B416D0503A6F159481517E7F2928EF8E

Exhibit A

Highland Capital Management Fund Advisors ("Claimant") is the beneficiary of an Expense Reimbursement Agreement with the Debtor. It has previously made payments for the Debtor and under the Expense Reimbursement Agreement is entitled to reimbursement from the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days. A true and correct copy of the agreement is attached hereto.

PAYROLL REIMBURSEMENT AGREEMENT

THIS PAYROLL REIMBURSEMENT AGREEMENT (this "***Agreement***") entered into on this 1st day of May, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto, is effective as of January 1, 2018 (the "***Effective Date***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will seek reimbursement from HCMFA for the cost of certain employees who are dual employees of HCMLP and HCMFA and who provide advice to registered investment companies advised by HCMFA under the direction and supervision of HCMFA as more fully described in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $416,000 per month.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 3.01.

"***Dual Employee***" has the meaning set forth in Section 2.01.

"***Effective Date***" has the meaning set forth in the preamble.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared

Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

ARTICLE II
EMPLOYEE REIMBURSEMENT

Section 2.01 Employee Reimbursement. During the Term, HCMFA shall reimburse HCMLP for the Actual Cost to HCMLP of certain employees who (i) are dual employees of HCMLP and HCMFA and (ii) provide advice to any investment company registered under the Investment Company Act of 1940, as amended (the "***1940 Act***") pursuant to an investment advisory agreement between HCMFA and such investment company (each, a "***Fund***") under the direction and supervision of HCMFA (each, a "***Dual Employee***").

Section 2.02 Changes to Employee Reimbursement. During the Term, the Parties may agree to modify the terms and conditions of HCMFA's reimbursement in order to reflect new procedures or processes, including modifying the Allocation Percentage (defined below) applicable to such Dual Employee to reflect the then current fair market value of such Dual Employee's employment. The Parties will negotiate in good faith the terms of such modification.

ARTICLE III
COST ALLOCATION

Section 3.01 Actual Cost Allocation Formula. The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on HCMFA matters, as listed on Exhibit A.

ARTICLE IV
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 4.01 Settlement Payments. At any time during the Term, HCMFA may make payment of the amounts that are allocable to it.

Section 4.02 Determination and Payment of Cost. HCMFA shall promptly make payment of the Actual Cost within ten (10) days of the end of each calendar month. Should either Party determine that a change to employee reimbursement is appropriate, as set forth in Section 2.02, the Party requesting the modification shall notify the other Party on or before the last business day of the calendar month.

Section 4.03 Taxes.

(a) HCMFA is responsible for and will pay all Taxes applicable to it, provided, that such payments by HCMFA to HCMLP will be made in the most tax-efficient manner and provided further, that HCMLP will not be subject to any liability for Taxes applicable to the cost of a Dual Employee of HCMFAas a result of such payment by HCMFA. HCMLP will collect such Tax from HCMFA in the same manner it collects such Taxes from other customers in the ordinary course of its business, but in no event prior to the time it invoices HCMFA for costs for which such Taxes are levied. HCMFA may provide HCMLP with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) HCMFA will reimburse HCMLP for any Taxes collected from HCMLP and refunded to HCMFA. In the event a Tax is assessed against HCMFA that is solely the responsibility of

HCMLP and HCMLP desires to protest such assessment, HCMLP will submit to HCMFA a statement of the issues and arguments requesting that HCMFA grant HCMLP the authority to prosecute the protest in HCMFA's name. HCMFA's authorization will not be unreasonably withheld. HCMLP will finance, manage, control and determine the strategy for such protest while keeping HCMFA reasonably informed of the proceedings. However, the authorization will be periodically reviewed by HCMFA to determine any adverse impact on HCMFA, and HCMFA will have the right to reasonably withdraw such authority at any time. Upon notice by HCMFA that it is so withdrawing such authority, HCMLP will expeditiously terminate all proceedings. Any adverse consequences suffered by HCMLP as a result of the withdrawal will be submitted to litigation pursuant to Section 6.14. Any contest for Taxes brought by HCMLP may not result in any lien attaching to any property or rights of HCMFA or otherwise jeopardize HCMFA's interests or rights in any of its property.

(c) The provisions of this Section 4.03 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 5.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
MISCELLANEOUS

Section 6.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. Neither Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever.

Section 6.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 6.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 6.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 6.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 6.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 6.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 6.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 6.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 6.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 6.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 6.14 Dispute Resolution; Jurisdiction. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, including, but not limited to, claims sounding in contract, equity, tort, fraud and statute ("Dispute") shall be submitted exclusively to the the courts located in Dallas County, Texas, and any appellate court thereof ("Enforcement Court"). Each party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including, but not limited to, administrative, arbitration, or litigation, other than the Enforcement Court.

Section 6.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name:_____
Title:_____

EXHIBIT A

EMPLOYEE ALLOCATIONS
(AS OF JANUARY 1, 2018)

EMPLOYEE NAME	PERCENTAGE (%) ALLOCATION TO HCMFA ADVISORS, L.P.
Abayarathna, Sahan	29%
Baynard, Cameron	29%
Burns, Nathan	10%
Covitz, Hunter	5%
Desai, Neil	5%
Dondero, James	30%
Fedoryshyn, Eric	29%
Gray, Matthew	29%
Gulati, Sanjay	100%
Hayes, Christopher	29%
Hill, Robert	5%
McFarling, Brandon	29%
Moore, Carl	5%
Nikolayev, Yegor	29%
Owens, David	29%
Parker, Trey	30%
Parmentier, Andrew	40%
Phillips, Michael	29%
Poglitsch, Jon	75%
Ryder, Phillip	5%
Sachdev, Kunal	29%
Smallwood, Allan	29%
Staltari, Mauro	29%
Tomlin, Jake	29%
Vira, Sagar	29%

AMENDMENT NUMBER ONE
TO
PAYROLL REIMBURSEMENT AGREEMENT

This Amendment Number One (this "***Amendment***") to the Payroll Reimbursement Agreement (the "***Agreement***") is entered into on December 14, 2018 by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***") and Highland Capital Management Fund Advisors, L.P., a Delaware limited partnership ("***HCMFA***"). Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***". Capitalized terms not defined herein shall have the meaning seet forth in the Agreement.

WHEREAS, HCMLP and HCMFA entered into the Agreement on May 1, 2018 to facilitate HCMFA's reimbursement to HCMLP for the cost of certain employees who are dual employees of HCMLP and HCMFA; and

WHEREAS, HCMLP and HCMFA now desire to amend the Agreement to capture a one time payment of estimated additional Actual Costs owed to HCMLP for additional resources used by HCMFA during the Term of the Agreement.

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

1. Payment of Additional Cost. In accordance with Section 2.02 of the Agreement (Changes to Employee Reimbursement), HCMFA hereby agrees to pay $1,200,000.00 to HCMLP, representing an estimate of additional Actual Costs owed under the Agreement for additional resources used by HCMFA (the "***Additional Actual Cost***"). HCMFA shall make payment of the Additional Actual Cost within ten (10) days of the date of this Agreement.

2. Ratification of Agreement. Except as expressly amended and provided herein, all of the terms, conditions and provisions of the Agreement are hereby ratified and confirmed to be of full force and effect, and shall continue in full force and effect.

3. Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

4. Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS HEREOF, each of the Parties has caused this Amendment to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name:_____
Title:_____

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name:_____
Title:_____

EXHIBIT 33

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   The Get Good Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   The Get Good Trust
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email gscott@myersbigel.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Trustee

Company: The Get Good Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4
1024Email20040800000000030

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
The Get Good Trust
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:37:43 p.m. Eastern Time
Title:
Trustee
Company:
The Get Good Trust

VN: 42E214BB0E01488F0C4C0D4029F41B10

Exhibit A

The Get Good Trust ("Claimant") is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 34

Claim #121 Date Filed: 4/8/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

NexPoint Healthcare Opportunities Fund
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No

☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Healthcare Opportunities Fund Highland Energy MLP Fund 300 Crescent Court, Ste 700 Dallas, Texas 75201	
Contact phone _____	Contact phone _____
Contact email See summary page	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_____

4. **Does this claim amend one already filed?**

☑ No

☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No

☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Healthcare Opportunities Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024[illegible]20040800000000037

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Healthcare Opportunities Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:31:55 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Healthcare Opportunities Fund

VN: B78417716A966B99D43AEEAA89B1133D

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 35

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland iBoxx Senior Loan ETF
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland iBoxx Senior Loan ETF 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?**

$ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☐ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland iBoxx Senior Loan ETF
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(6"«
1024Email20040800000000022

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland iBoxx Senior Loan ETF
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:07:44 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland iBoxx Senior Loan ETF

VN: D40E207D2AA66DCDF104571A531243D5

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 36

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Event-Driven Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   NexPoint Event-Driven Fund
   Highland Energy MLP Fund
   300 Crescent Court, Ste 700
   Dallas, Texas 75201

   Contact phone
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Event-Driven Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(I^«
1024[illegible]20040800000000041

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Event-Driven Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:42:35 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Event-Driven Fund

VN: 9ADC39454C0B527E9D77BF17D4CA34B7

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 37

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Energy and Material Opportunities Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone _____	Contact phone _____
Contact email See summary page	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
_____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name | Middle name | Last name

Title: Authorized Agent

Company: NexPoint Energy and Material Opportunities Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024[illegible]20040800000000040

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Energy and Material Opportunities Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:39:28 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Energy and Material Opportunities Fund

VN: BEC720930A15FF723D1705466D610C1B

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 38

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Floating Rate Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Floating Rate Fund
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone 972-628-4100
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone ____
   Contact email ____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   ____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Floating Rate Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4
1024Email20040800000000020

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Floating Rate Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:03:48 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Floating Rate Fund

VN: 1367BD08198D19B415A81878D82520B7

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 39

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Total Return Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Total Return Fund Highland Energy MLP Fund 300 Crescent Court, Ste 700 Dallas, Texas 75201	
Contact phone	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Total Return Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(<v«
1024Email:20040800000000028

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Total Return Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:16:29 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Total Return Fund

VN: BF5CED1789F936ACBD482DA331579A7E

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 40

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Small-Cap Equity Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Highland Small-Cap Equity Fund
   Highland Energy MLP Fund
   300 Crescent Court, Ste 700
   Dallas, Texas 75201

   Contact phone ____
   Contact email See summary page

   Where should payments to the creditor be sent? (if different)
   Contact phone ____
   Contact email ____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   ____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Small-Cap Equity Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

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1024[illegible]20040800000000021

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Small-Cap Equity Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Subject to Right of Setoff:
No

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:06:28 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Small-Cap Equity Fund

VN: 281156D56BD9541990B1F8C2B88D9DDC

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 41

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone	Contact phone
Contact email gscott@myersbigel.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name | Middle name | Last name

Title: Trustee

Company: The Get Good Non-Exempt Trust No. 1, individually and as successor-in-i
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(Jl«
1024[illegible]20040800000000042

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
The Get Good Non-Exempt Trust No. 1, individually and as successor-in-interest of the Canis Minor Trust

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Subject to Right of Setoff:
No

Basis for Perfection:

Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:44:26 p.m. Eastern Time

Title:
Trustee

Company:
The Get Good Non-Exempt Trust No. 1, individually and as successor-in-interest of the Canis Minor Trust

VN: 4BC573225F726EA3B169490014EB5868

Exhibit A

The Get Good Non-Exempt Trust No. 1 ("Claimant") is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 42

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone	Contact phone
Contact email gscott@myersbigel.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

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If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name | Middle name | Last name

Title: Trustee

Company: The Get Good Non-Exempt Trust No. 2, individually and as successor-in-i
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(L!«
1024[illegible]20040800000000044

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
The Get Good Non-Exempt Trust No. 2, individually and as successor-in-interest of the Canis Minor Trust

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:48:01 p.m. Eastern Time

Title:
Trustee

Company:
The Get Good Non-Exempt Trust No. 2, individually and as successor-in-interest of the Canis Minor Trust

VN: 12E29DE972833D81203B490C66B7B6F3

Exhibit A

The Get Good Non-Exempt Trust No. 2 ("Claimant") is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 43

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Latin America Opportunities Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached Exhibit "A" v2 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   see attached Exhibit "A" v2

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Latin America Opportunities Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(Kz«
1024[illegible]20040800000000043

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Latin America Opportunities Fund
Highland Energy MLP Fund
300 Crescent Court, Ste 700

Dallas, Texas, 75201

Phone:

Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
see attached Exhibit "A" v2

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached Exhibit "A" v2

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:47:39 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Latin America Opportunities Fund

VN: 9240F3A3F72685C9C06073858009F8DD

Exhibit A

This Exhibit "A" is being filed by NexPoint Advisors, L.P. and Claimant pursuant to the Amended and Restated Shared Services Agreement dated to be effective as of January 1, 2018, the Sub-Advisory Agreement dated to be effective as of June 1, 2018, the Payroll Reimbursement Agreement dated to be effective as of January 1, 2018 and Amendment Number One to the Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Pursuant to these agreements, Debtor provides accounting and financial services to NexPoint Advisors, L.P. and Claimant. NexPoint Advisors, L.P. and Claimant have requested information from the Debtor to ascertain the exact amount of the claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 44

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   The Dugaboy Investment Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   The Dugaboy Investment Trust
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email gscott@myersbigel.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Trustee

Company: The Dugaboy Investment Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(M/«
1024Email:20040800000000045

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
The Dugaboy Investment Trust
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 3:54:11 p.m. Eastern Time
Title:
Trustee
Company:
The Dugaboy Investment Trust

VN: 65752F35DCEED8B0205CA4C7932BA53B

Exhibit A

The Dugaboy Investment Trust ("Claimant") entered into a Master Securities Lending Agreement with Highland Select Equity Master Fund ("Select") whereby Claimant loaned money on behalf of Select. It is believed that the Debtor is obligated to make Claimant whole. It is further believed that such payment was to be made in shares which have a fair market value of approximately four million dollars. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 45

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Highland Merger Arbitrage Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Highland Merger Arbitrage Fund 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 972-628-4100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Merger Arbitrage Fund
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(9L«
1024[illegible]20040800000000025

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Merger Arbitrage Fund
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 3:10:17 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Merger Arbitrage Fund

VN: 2C1AD1A2341171BE5355F6A311981A7A

Exhibit A

This Exhibit "A" is being filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA") and Claimant pursuant to the Second Amended and Restated Shared Services Agreement to be effective as of February 8, 2013, the Payroll Reimbursement Agreement entered into May 1, 2018 and Amendment Number One to Payroll Reimbursement Agreement entered into on December 14, 2018, pursuant to which Claimant has a claim against the Debtor in a contingent and unliquidated amount. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 46

Claim #133 Date Filed: 4/8/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   CLO Holdco, Ltd.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	CLO Holdco, Ltd. Grant Scott, Director Myers Bigel P.A. 4140 Park Lake Ave., Ste 600 Raleigh, NC 27612, United States
Contact phone 214-777-4200	Contact phone
Contact email jkane@krcl.com	Contact email gscott@myersbigel.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 11,340,751.26 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Participation and Tracking Interests in investment funds

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Counsel

Company: CLO Holdco, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024Email:20040800000000046

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
CLO Holdco, Ltd.
Kane Russell Coleman Logan PC, John J Kane
901 Main Street, Suite 5200
Dallas, TX, 75202
United States
Phone:
214-777-4200
Phone 2:
Fax:
214-777-4299
Email:
jkane@krcl.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Disbursement/Notice Parties:
CLO Holdco, Ltd.
Grant Scott, Director
Myers Bigel P.A.
4140 Park Lake Ave., Ste 600
Raleigh, NC, 27612
United States
Phone:
Phone 2:
Fax:
E-mail:
gscott@myersbigel.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Participation and Tracking Interests in investment funds

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
11,340,751.26

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 08-Apr-2020 4:01:05 p.m. Eastern Time
Title:
Counsel
Company:
CLO Holdco, Ltd.

VN: 40FC9A02F31BC75088D8C008E639294D

Fill in this information to identify the case:

Debtor 1: Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing): _____

United States Bankruptcy Court for the: Northern District of Texas

Case number: 19-34054-sgj11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

CLO Holdco, Ltd.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Kane Russell Coleman Logan PC, John J Kane Name	CLO Holdco, Ltd., Grant Scott, Director Name
901 Main Street, Suite 5200 Number Street	Myers Bigel P.A., 4140 Park Lake Ave., Ste 600 Number Street
Dallas TX 75202 City State ZIP Code	Raleigh NC 27612 City State ZIP Code
Contact phone 214.777.4200	Contact phone _____
Contact email jkane@krcl.com	Contact email gscott@myersbigel.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 11,340,751.26 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Participation and Tracking Interests in investment funds

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 4/3/2020
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Counsel (Myers Bigel Sibley & Sajovec, P.A.)

Company: CLO Holdco, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4140 Park Lake Ave., Suite 600
Number Street

Raleigh NC 27612
City State ZIP Code

Contact phone _____ Email gscott@myersbigel.com

SUMMARY OF PROOF OF CLAIM

Debtor(s): Highland Capital Management, L.P. (the "**Debtor**")

Case Info: 19-34054-sgj11; United States Bankrutpcy Court, Northern District of Texas, Dallas Division

Creditor: CLO Holdco, Ltd. ("**CLO**")

A. **CLO's Proof of Claim**

1. Claim Amount. CLO files this Proof of Claim in the amount of $11,340,751.26, which evidences the amount of CLO's claim against the Debtor as of October 16, 2019 (the "Petition Date"). CLO's claim consists of participation interests and tracking interests in shares of certain funds, evidenced by certain transfer documents attached to this Summary. Below is a summary statement of accounts provided by the Debtor to CLO on October 24, 2019:

Participated & tracking interests

Partners Name	6/30/19 NAV	7/31/19 NAV	Redemptions payable (August 2019)	Total @ 7/31/19	8/31/19 NAV	Redemptions payable (August 2019)	Total @ 8/31/19
HCMLP comp	2,907,647	1,761,399	1,111,993	2,873,393	1,741,909	1,111,993	2,853,902
HCMLP prior	1,055,973	639,692	403,844	1,043,536	632,617	403,844	1,036,461
Eames, Ltd.	5,998,476	3,723,146	2,204,458	5,927,604	3,680,646	2,204,458	5,885,104
HCMLP (1)	360,805	223,946	132,597	356,544	221,391	132,597	353,989
HCMLP (2)	1,187,441	737,023	436,388	1,173,412	728,610	436,388	1,164,998
Total	**$ 11,510,343**	$ 7,085,207	$ 4,289,281	**$ 11,374,488**	$ 7,005,174	$ 4,289,281	**$ 11,294,454**

CLO understands that certain Arbitration Awards beneficial to the Crusader Funds would materially increase the value of CLO's participation and tracking interests. Accordingly, CLO's claim may materially increase. As CLO's claim is tied to the value of its participation interests, CLO's recovery cannot be limited to the face amount of its claim as of the Petition Date.

2. Supporting Documentation. The total amount due and owing as of the Petition Date is evidenced by the following supporting documentation:

a. The Statement of Accounts provided above;

b. Debtor's List of Largest Unsecured Creditors;

c. Excerpt of Debtor's Schedules; and

d. Participation Interest and Tracking Interest transfer documents detailing transfer of ownership interests to CLO.

B. **Reservation of Rights**

By filing this Proof of Claim, CLO expressly reserves all of its rights to, among other things, amend this claim, file an administrative expense claim, file a rejection claim, and seek attorneys' fees and interest as allowed by law. If the Debtor objects to this Proof of Claim, CLO reserves the right to produce additional documents and facts as necessary to support its claim. CLO also reserves the right to file a motion for relief from stay or other pleading to enforce its right to the proceeds of certain funds in which CLO owns a participation or tracking interest.

ATTACHMENT B

Fill in this information to identify your case:

United States Bankruptcy Court for the:

DISTRICT OF DELAWARE

Case number *(If known)* _____ Chapter 11

☐ Check if this an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy 4/19

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1.	**Debtor's name**	**Highland Capital Management, L.P.**
2.	**All other names debtor used in the last 8 years** Include any assumed names, trade names and *doing business as* names	
3.	**Debtor's federal Employer Identification Number** (EIN)	**75-2716725**
4.	**Debtor's address**	**Principal place of business** **300 Crescent Court** **Suite 700** **Dallas, TX 75201** Number, Street, City, State & ZIP Code **Dallas** County **Mailing address, if different from principal place of business** P.O. Box, Number, Street, City, State & ZIP Code **Location of principal assets, if different from principal place of business** Number, Street, City, State & ZIP Code
5.	**Debtor's website** (URL)	**www.highlandcapital.com**
6.	**Type of debtor**	☐ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP)) ■ Partnership (excluding LLP) ☐ Other. Specify: _____

Debtor Highland Capital Management, L.P. (Name) Case number (*if known*) _____

7. Describe debtor's business

A. *Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ■ None of the above

B. *Check all that apply*

- ☐ Tax-exempt entity (as described in 26 U.S.C. §501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- ■ Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes.

5259

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- ☐ Chapter 7
- ☐ Chapter 9
- ■ Chapter 11. *Check all that apply:*
  - ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).
  - ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
  - ☐ A plan is being filed with this petition.
  - ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
  - ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
  - ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.
- ☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

- ■ No.
- ☐ Yes.

District _____ When _____ Case number _____

District _____ When _____ Case number _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list

- ■ No
- ☐ Yes.

Debtor _____ Relationship _____

District _____ When _____ Case number, if known _____

Debtor Highland Capital Management, L.P. (Name) Case number (*If known*) _____

11. Why is the case filed in *this district?*

Check all that apply:

- ■ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

- ■ No
- ☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

- ☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
  What is the hazard? _____
- ☐ It needs to be physically secured or protected from the weather.
- ☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- ☐ Other _____

Where is the property? _____
Number, Street, City, State & ZIP Code

Is the property insured?

- ☐ No
- ☐ Yes. Insurance agency _____
  Contact name _____
  Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

- ■ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available to unsecured creditors.

14. Estimated number of creditors

- ☐ 1-49
- ☐ 50-99
- ☐ 100-199
- ■ 200-999
- ☐ 1,000-5,000
- ☐ 5001-10,000
- ☐ 10,001-25,000
- ☐ 25,001-50,000
- ☐ 50,001-100,000
- ☐ More than100,000

15. Estimated Assets

- ☐ $0 - $50,000
- ☐ $50,001 - $100,000
- ☐ $100,001 - $500,000
- ☐ $500,001 - $1 million
- ☐ $1,000,001 - $10 million
- ☐ $10,000,001 - $50 million
- ☐ $50,000,001 - $100 million
- ■ $100,000,001 - $500 million
- ☐ $500,000,001 - $1 billion
- ☐ $1,000,000,001 - $10 billion
- ☐ $10,000,000,001 - $50 billion
- ☐ More than $50 billion

16. Estimated liabilities

- ☐ $0 - $50,000
- ☐ $50,001 - $100,000
- ☐ $100,001 - $500,000
- ☐ $500,001 - $1 million
- ☐ $1,000,001 - $10 million
- ☐ $10,000,001 - $50 million
- ☐ $50,000,001 - $100 million
- ■ $100,000,001 - $500 million
- ☐ $500,000,001 - $1 billion
- ☐ $1,000,000,001 - $10 billion
- ☐ $10,000,000,001 - $50 billion
- ☐ More than $50 billion

Debtor Highland Capital Management, L.P.
Name

Case number (*if known*)

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is trued and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/16/2019
MM / DD / YYYY

X
Signature of authorized representative of debtor

Strand Advisors, Inc., General Partner
by: James D. Dondero, President
Printed name

Title

18. Signature of attorney

X
Signature of attorney for debtor

Date 10/16/2019
MM / DD / YYYY

James E. O'Neill
Printed name

Pachulski Stang Ziehl & Jones LLP
Firm name

919 N. Market Street
17th Floor
Wilmington, DE 19899
Number, Street, City, State & ZIP Code

Contact phone **302-652-4100** Email address **joneill@pszjlaw.com**

4042 DE
Bar number and State

ACTION BY WRITTEN CONSENT OF
THE SOLE GENERAL PARTNER
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.
(a Delaware limited partnership)

The undersigned, being the sole general partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Company**"), hereby takes the following actions and adopts the following resolutions:

WHEREAS, the General Partner, acting pursuant to the laws of the State of Delaware, has considered the financial and operational aspects of the Company's business;

WHEREAS, the General Partner has reviewed the historical performance of the Company, the outlook for the Company's assets and overall performance, and the current and long-term liabilities of the Company;

WHEREAS, the General Partner has carefully reviewed and considered the materials presented to it by the management of and the advisors to the Company regarding the possible need to undertake a financial and operational restructuring of the Company; and

WHEREAS, the General Partner has analyzed each of the financial and strategic alternatives available to the Company, including those available on a consensual basis with the principal stakeholders of the Company, and the impact of the foregoing on the Company's business and its stakeholders.

NOW, THEREFORE, BE IT RESOLVED, that in the judgment of the General Partner, it is desirable and in the best interests of the Company, its creditors, partners, and other interested parties that a petition be filed by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware;

RESOLVED, that the officers of the General Partner (each, an "**Authorized Officer**") be, and each of them hereby is, authorized, empowered and directed on behalf of the Company to execute, verify and file all petitions, schedules, lists, and other papers or documents, and to take and perform any and all further actions and steps that any such Authorized Officer deems necessary, desirable and proper in connection with the Company's chapter 11 case, with a view to the successful prosecution of such case, including all actions and steps deemed by any such Authorized Officer to be necessary or desirable to the develop, file and prosecute to confirmation a chapter 11 plan and related disclosure statement;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to retain the law firm of Pachulski Stang Ziehl & Jones LLP ("**PSZ&J**") as bankruptcy counsel to represent and assist the Company in carrying out its duties under chapter 11 of the Bankruptcy Code, and to take any and all actions to advance the Company's rights in connection therewith, and the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and immediately upon the filing of the bankruptcy, and to cause to be filed an appropriate application for authority to retain the services of PSZ&J;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to retain and employ Development Specialists, Inc. ("***DSI***") to provide the Company with Bradley D. Sharp as chief restructuring officer ("***CRO***") and additional personnel to assist in the execution of the day to day duties as CRO. The CRO, subject to oversight of the General Partner will lead the Company's restructuring efforts along with the Company's advisors, and to take any and all actions to advance the Company's rights in connection therewith, and the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and immediately upon the filing of the bankruptcy petition, and to cause to be filed an appropriate application for authority to hire the CRO and his affiliated firm, DSI;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to employ any other professionals necessary to assist the Company in carrying out its duties under the Bankruptcy Code; and in connection therewith, the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to or immediately upon the filing of the chapter 11 case and cause to be filed appropriate applications with the bankruptcy court for authority to retain the services of any other professionals, as necessary, and on such terms as are deemed necessary, desirable and proper;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to obtain post-petition financing and obtain permission to use existing cash collateral according to terms which may be negotiated by or on behalf of the Company, and to enter into any guaranties and to pledge and grant liens on its assets as may be contemplated by or required under the terms of such post-petition financing or cash collateral arrangement; and in connection therewith, the Authorized Officers shall be, and each of them hereby is, hereby authorized, empowered and directed, on behalf of the Company, to execute appropriate loan agreements, cash collateral agreements and related ancillary documents;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to take any and all actions, to execute, deliver, certify, file and/or record and perform any and all

documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities or certificates and to take any and all actions and steps deemed by any such Authorized Officer to be necessary or desirable to carry out the purpose and intent of each of the foregoing resolutions and to effectuate a successful chapter 11 case;

RESOLVED, that any and all actions heretofore taken by any Authorized Officer in the name and on behalf of the Company in furtherance of the purpose and intent of any or all of the foregoing resolutions be, and hereby are, ratified, confirmed, and approved in all respects.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have duly executed this Written Consent as of October 7, 2019.

STRAND ADVISORS, INC.
Sole General Partner of Highland Capital Management, L.P.

By: _____
James D. Dondero
President

SIGNATURE PAGE TO THE ACTION BY WRITTEN CONSENT OF THE SOLE GENERAL PARTNER OF HIGHLAND CAPITAL MANAGEMENT, L.P.

Fill in this information to identify the case:

Debtor name HIGHLAND CAPITAL MANAGEMENT, L.P.

United States Bankruptcy Court for the: District of Delaware (State)

Case number (If known): 19-

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders 12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1.	Redeemer Committee of the Highland Crusader Fund c/o Terri Mascherin, Esq. Jenner & Block 353 N. Clark Street Chicago, IL 60654-3456	Terri Mascherin Tel: 312.923.2799 Email: tmascherin@jenner.com	Litigation	Contingent Unliquidated Disputed			$189,314,946.00
2.	Patrick Daugherty c/o Thomas A. Uebler, Esq. McCollom D'Emilio Smith Uebler LLC 2751 Centerville Rd #401 Wilmington, DE 19808	Thomas A. Uebler Tel: 302.468.5963 Email: tuebler@mdsulaw.com	Litigation	Contingent Unliquidated Disputed			$11,700,000.00
3.	CLO Holdco, Ltd. Grant Scott, Esq. Myers Bigel Sibley & Sajovec, P.A. 4140 Park Lake Ave, Ste 600 Raleigh, NC 27612	Grant Scott Tel: 919.854.1407 Email: gscott@myersbigel.com	Contractual Obligation				$11,511,346.00

4.	McKool Smith, P.C. Gary Cruciani, Esq. McKool Smith 300 Crescent Court, Suite 1500 Dallas, TX 75201	Gary Cruciani Tel: 214.978.4009 Email: gcruciani@mckoolsmith.com	Professional Services	Contingent Unliquidated Disputed			$2,163,976.00
5.	Meta-e Discovery LLC Paul McVoy Six Landmark Square, 4th Floor Stamford, CT 6901	Paul McVoy Tel: 203.544.8323 Email: pmcvoy@metaediscovery.com	Professional Services				$1,852,348.54
6.	Foley Gardere Holly O'Neil, Esq. Foley & Lardner LLP 2021 McKinney Avenue Suite 1600 Dallas, TX 75201	Holly O'Neil Tel: 214.999.4961 Email: honeil@foley.com	Professional Services				$1,398,432.44
7.	DLA Piper LLP (US) Marc D. Katz, Esq. 1900 N Pearl St, Suite 2200 Dallas, TX 75201	Marc D. Katz Tel: 214.743.4534 Email: marc.katz@dlapiper.com	Professional Services				$994,239.53
8.	Reid Collins & Tsai LLP William T. Reid, Esq. 810 Seventh Avenue, Ste 410 New York, NY 10019	William T. Reid Tel: 512.647.6105 Email: wreid@rctlegal.com	Professional Services				$625,845.28
9.	Joshua & Jennifer Terry c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201	Brian Shaw Tel: 214. 239.2707 email: shaw@roggedunngroup.com	Litigation	Contingent Unliquidated Disputed			$425,000.00
10.	NWCC, LLC c/o of Michael A. Battle, Esq. Barnes & Thornburg, LLP 1717 Pennsylvania Ave N.W. Ste 500 Washington, DC 20006-4623	Michael A. Battle Tel: 202.371.6350 Email: mbattle@btlaw.com	Litigation	Contingent Unliquidated Disputed			$375,000.00
11.	Duff & Phelps, LLC c/o David Landman Benesch, Friedlander, Coplan & Aronoff LLP 200 Public Square, Suite 2300 Cleveland, OH 44114-2378	David Landman Tel: 216.363.4593 Email: dlandman@beneschlaw.com	Professional Services				$350,000.00

12.	American Arbitration Association 120 Broadway, 21st Floor, New York, NY 10271	Elizabeth Robertson, Director Tel: 212.484.3299 Email: robertsone@adr.org	Professional Services				$292,125.00
13.	Lackey Hershman LLP Paul Lackey, Esq. Stinson LLP 3102 Oak Lawn Avenue, Ste 777 Dallas, TX 75219	Paul Lackey Tel: 214.560.2206 Email: paul.lackey@stinson.com	Professional Services				$246,802.54
14.	Bates White, LLC Karen Goldberg, Esq. 2001 K Street NW, North Bldg Suite 500 Washington, DC 20006	Karen Goldberg Tel: 202.747.2093 Email: karen.goldberg@bateswhite.com	Professional Services				$235,422.04
15.	Debevoise & Plimpton LLP c/o Accounting Dept 28th Floor 919 Third Avenue New York, NY 10022	Michael Harrell Tel: 212-909-6349 Email: mpharrell@debevoise.com	Professional Services				$179,966.98
16.	Andrews Kurth LLP Scott A. Brister, Esq. 111 Congress Avenue, Ste 1700 Austin, TX 78701	Scott A. Brister Tel: 512.320.9220 Email: ScottBrister@andrewskurth.com	Professional Services				$137,637.81
17.	Connolly Gallagher LLP 1201 N. Market Street 20th Floor Wilmington, DE 19801	Ryan P. Newell Tel: 302.888.6434 Email: rnewell@connollygallagher.com	Professional Services				$118,831.25
18.	Boies, Schiller & Flexner LLP 5301 Wisconsin Ave NW Washington, DC 20015-2015	Scott E. Gant Tel: 202.237.2727 Email: sgant@bsfllp.com	Professional Services				$115,714.80
19.	UBS AG, London Branch and UBS Securities LLC c/o Andrew Clubock, Esq. Latham & Watkins LLP 555 Eleventh Street NW Suite 1000 Washington, DC 20004-130	Andrew Clubock Tel: 202.637.3323 email: Andrew.Clubok@lw.com	Litigation	Contingent Unliquidated Disputed			Unliquidated

20.	Acis Capital Management, L.P. and Acis Capital Management GP, LLC c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201	Brian Shaw Tel: 214. 239.2707 email: shaw@roggedunngroup.com	Litigation	Contingent Unliquidated Disputed			Unliquidated

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the Debtor, certifies that the following is a corporation other than the Debtor, or a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or states that there are no entities to report under FRBP 7007.1.

☑ None [*check if applicable*]

Name:
Address:

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with rule 1007(a)(3) for filing in this Chapter 11 Case:

Name: Strand Advisors, Inc.
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Dugaboy Investment Trust
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: Mark K. Okada
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Mark and Pamela Okada Family Trust – Exempt Trust #1
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Mark and Pamela Okada Family Trust – Exempt Trust #2
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: Hunter Mountain Investment Trust
Address: c/o Rand Advisors LLC
John Honis
87 Railroad Place Ste 403
Saratoga Springs, NY 12866

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

CERTIFICATION OF CREDITOR MATRIX

Pursuant to Rule 1007-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the above captioned debtor (the "Debtor") hereby certifies that the *Creditor Matrix* submitted herewith contains the names and addresses of the Debtor's creditors. To the best of the Debtor's knowledge, the *Creditor Matrix* is complete, correct, and consistent with the Debtor's books and records.

The information contained herein is based upon a review of the Debtor's books and records as of the petition date. However, no comprehensive legal and/or factual investigations with regard to possible defenses to any claims set forth in the *Creditor Matrix* have been completed. Therefore, the listing does not, and should not, be deemed to constitute: (1) a waiver of any defense to any listed claims; (2) an acknowledgement of the allowability of any listed claims; and/or (3) a waiver of any other right or legal position of the Debtor.

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: DISTRICT OF DELAWARE

Case number (If known) _____

☐ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* _____
- ■ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ■ Other document that requires a declaration **Corporate Ownership Statement, List of Equity Holders, Creditor Matrix Certification**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/16/2019

x _____

Signature of individual signing on behalf of debtor

Frank Waterhouse

Printed name

Treasurer of Strand Advisors, Inc., General Partner

Position or relationship to debtor

ATTACHMENT C

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206E/F

Schedule E/F: Creditors Who Have Unsecured Claims 12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. **Do any creditors have priority unsecured claims?** (See 11 U.S.C. § 507).

☐ No. Go to Part 2.

☑ Yes. Go to line 2.

2. **List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part.** If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

			Total claim	Priority amount
2.1	Priority creditor's name and mailing address **All Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	As of the petition filing date, the claim is: *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**	**Unknown**
	Date or dates debt was incurred **2019**	Basis for the claim: **Employee Wages & Bonuses**		
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	Is the claim subject to offset? ☑ No ☐ Yes		

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. **List in alphabetical order all of the creditors with nonpriority unsecured claims**. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

			Amount of claim
3.1	**Nonpriority creditor's name and mailing address** **45 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**
	Date(s) debt was incurred **2017, 2018 & 2019** **Last 4 digits of account number** _	**Basis for the claim:** **Deferred Awards** Is the claim subject to offset? ☑ No ☐ Yes	
3.2	**Nonpriority creditor's name and mailing address** **46 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☐ Unliquidated ☐ Disputed	**$5,758,166.67**
	Date(s) debt was incurred **2018** **Last 4 digits of account number** _	**Basis for the claim:** **Prior year employee bonuses** Is the claim subject to offset? ☑ No ☐ Yes	

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.32	**Nonpriority creditor's name and mailing address** **Centroid** **1050 Wilshire Dr.** **Ste #170** **Troy, MI 48084** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,155.00**
3.33	**Nonpriority creditor's name and mailing address** **Chase Couriers, Inc** **1220 Champion Circle** **#114** **Carrollton, TX 75006** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$155.81**
3.34	**Nonpriority creditor's name and mailing address** **CLO Holdco, Ltd.** **c/o Grant Scott, Esq** **Myers Bigel Sibley & Sajovec, P.A.** **4140 Park Lake Ave, Ste 600** **Raleigh, NC 27612** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed **Basis for the claim:** **Contractual Obligation** Is the claim subject to offset? ☑ No ☐ Yes	**$11,340,751.26**
3.35	**Nonpriority creditor's name and mailing address** **Cole Schotz** **Court Plaza North** **25 Main Street** **P.O. Box 800** **Hackensack, NJ 07602-0800** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$198,760.29**
3.36	**Nonpriority creditor's name and mailing address** **Coleman Research Group, Inc.** **120 West 45th St** **25th Floor** **New York, NY 10036** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$52,500.00**
3.37	**Nonpriority creditor's name and mailing address** **Concur Technologies, Inc.** **18400 NE Union Hill Road** **Redmond, WA 98052** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$4,090.46**
3.38	**Nonpriority creditor's name and mailing address** **Connolly Gallagher LLP** **1201 North Market Street** **20th Floor** **Wilmington, DE 19801** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$118,831.25**

ATTACHMENT D

CHARITABLE DAF GP, LLC (THE "COMPANY")
IN ITS CAPACITY AS GENERAL PARTNER OF
CHARITABLE DAF FUND, LP

WRITTEN RESOLUTIONS OF THE MANAGING MEMBER OF THE COMPANY
AS GENERAL PARTNER OF CHARITABLE DAF FUND, LP

1. INTRODUCTION

1.1 **IT IS NOTED** that:

(a) the Company is general partner of Charitable DAF Fund, LP (the "**Partnership**"), a Cayman Islands exempted limited partnership;

(b) the partnership agreement of the Partnership confers upon the Company, as general partner of the Partnership, broad power to manage the affairs and conduct the business of the Partnership; and

(c) all references in these resolutions to things being done by the Partnership shall be construed as to things being done by the Company as general partner of the Partnership.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Partnership has received an investment contribution from its 99% limited partner, Charitable DAF HoldCo, Ltd. ("**Charitable DAF HoldCo**"), consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Partnership owns 100% of CLO HoldCo, Ltd. ("**CLO HoldCo**");

(c) the Partnership contributed and transferred the Investments to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (such contribution and transfer, together with the receipt of the Investments, together the "**Prior Transfer**");

(d) each of CLO HoldCo and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

(e) the Partnership has received an investment contribution from Charitable DAF HoldCo consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**");

(f) the Partnership wishes to contribute and transfer the AA Participation Interest to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**"); and

(g) the Managing Member of the Company is of the view that the Proposed Transaction falls within the purpose and investment limitation and restrictions as set out in the partnership agreement of the Partnership.

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Partnership hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Managing Member of the Company, the entry into the Proposed Transaction generally by the Company and/or the Partnership would be in the best interests of the Company and the Partnership (as applicable);

(c) the Company, in its capacity as the general partner of the Partnership, hereby approves the Proposed Transaction, effective as of December 28, 2016;

(d) the Company and/or the Partnership does give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Managing Member or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of the Proposed Transaction and the Company and/or the Partnership do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Managing Member of the Company or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Managing Member or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company and/or the Partnership; and

(f) any Ancillary Documents, where required to be executed by the Company and/or the Partnership (whether under hand or as a deed), be executed by the signature thereof of the Managing Member or any Attorney or Authorised Signatory

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Managing Member, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Managing Member or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Managing Member or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the

foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Managing Member prior to such action being taken.

Grant James Scott

Managing Member

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options		# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17		10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ **11,144,507.85**

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ **1,480,887.59**

Total of Crusader Participations and Tracked Interests $ **12,625,395.44**

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ **8,710,000.00**

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED EFFECTIVE DECEMBER 28, 2016

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1. DIRECTOR'S INTEREST

1.1 **IT IS NOTED** that:

(a) the sole Director discloses an interest in the matters the subject of these resolutions as a Managing Member of Charitable DAF GP, LLC, general partner of Charitable DAF Fund, LP (the "**Partnership**");

(b) such Director therefore:

(i) is to be considered as interested in any contract or proposed contract or arrangement (the "**transaction**") with the foregoing; and

(ii) requests that the foregoing be treated as general notice of such interests; and

(c) pursuant to the articles of association of the Company:

(i) a Director may vote in respect of any transaction notwithstanding that he may be interested therein; and

(ii) if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Director at which any such transaction shall come before the meeting for consideration.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Company is the sole limited partner of the Partnership;

(c) the Company contributed and transferred the Investments to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (the "**Prior Transfer**");

(d) each of the Company and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto (the "**AA Options Transfer**");

(e) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**"); and

(f) the Company desires to contribute and transfer the AA Participation Interest to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**").

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Company hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Director, the entry into and performance by the Company of its obligations under the Proposed Transaction generally would be in the best interests of the Company;

(c) the transactions contemplated by the Proposed Transaction be approved;

(d) the Company do give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by the Proposed Transaction and the Company do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Director or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Director or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company; and

(f) the Ancillary Documents, where required to be executed by the Company (whether under hand or as a deed), be executed by the signature thereof of the Director or any Attorney or Authorised Signatory and where required to be sealed, by affixing thereto of the Seal of the Company, witnessed as required by the Articles of Association of the Company.

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things

and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

[Signature page follows]

Grant James Scott

Director

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
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Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

DONATIVE ASSIGNMENT OF INTERESTS

RECITALS

WHEREAS, The Get Good Nonexempt Trust (the "Trust") is a Texas trust created under a Trust Agreement dated June 29, 2001 (the "Partnership Agreement"); and

WHEREAS, the Trust previously gave, donated and assigned all of the assets list on Exhibit A attached hereto to Highland Dallas Foundation, Inc. (the "Prior Donative Assignment"); and

WHEREAS, the Trust wishes to rescind and nullify the portion of the Prior Donative Assignment consisting of call options (the "AA Options") of American Airlines Group, Inc. as set forth on Exhibit A attached hereto; and

WHEREAS, the Trust owns all of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "Participation Interest"); and

WHEREAS, Grant James Scott, in the exercise of his discretion as Trustee of the Trust, has approved the distribution of the Participation Interest as a charitable contribution to Highland Dallas Foundation, Inc., a permissible beneficiary of the Trust which is a tax exempt public charity that is a supporting organization described in Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Trustee of the Trust wishes to give and assign the Participation Interest to Highland Dallas Foundation, Inc. effective December 28; 2016;

TRANSFER AND ASSIGNMENT

NOW, THEREFORE, the Trustee of the Trust hereby rescinds and nullifies the AA Option Donative Assignment; and

The Trustee of the Trust hereby gives, donates and assigns the Participation Interest to Highland Dallas Foundation, Inc.

This donative assignment is to be effective as 5:00 p.m. CST, December 28, 2016.

THE GET GOOD NONEXEMPT TRUST

By: _____
Grant James Scott, Trustee

The undersigned hereby acknowledges that it (i) is aware of this donative assignment of interests from The Get Good Nonexempt Trust to Highland Dallas Foundation, Inc., and (ii) agrees to be bound by this donative assignment.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.
Its General Partner

By: _____
James Dondero, President

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
American Airlines Call Options CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

American Airlines Call Options

	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any

representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

HIGHLAND DALLAS FOUNDATION, INC.

Unanimous Written Consent of Directors
In Lieu of Meeting

THE UNDERSIGNED, being all of the directors of Highland Dallas Foundation, Inc. ("Foundation"), a Delaware nonprofit nonstock corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, and hereby direct that this Written Consent be filed with the minutes of the proceedings of the Board of Directors of the Foundation:

WHEREAS, the Foundation received and accepted a gift from The Get Good Nonexempt Trust created by Trust Agreement dated June 29, 2001 (the "Trust") consisting of the assets listed on Exhibit A attached hereto (collectively, the "Prior Gifted Interests"), effective December 28, 2016;

WHEREAS, the Foundation and Get Good desire to rescind and nullify the portion of the Prior Gifted Interests consisting of call options (the "AA Options") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

WHEREAS, the Foundation has received and hereby accepts a gift from the Trust consisting of the assets listed on Exhibit B attached hereto, effective December 28, 2016, which includes a participation interest in the AA Options (the "Gifted Participation Interest"); and

WHEREAS, the Foundation currently owns 100 Participating Shares in Charitable DAF HoldCo, Ltd. ("DAF HoldCo"), a Cayman Islands exempted company, which shares represent one-third of the economic value of DAF HoldCo; and

WHEREAS, the Foundation's interest in DAF HoldCo has produced significant returns for the Foundation that are used in furtherance of its exempt purposes and those of its supported organization; and

WHEREAS, the directors of the Foundation, after careful consideration, believe it is in the best interests of the Foundation and its supported organization to contribute the Gifted Participation Interest to DAF HoldCo;

NOW, THEREFORE, be it hereby

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the rescission and nullification of the gift of the AA Options, and the Foundation hereby irrevocably and unconditionally fully and forever waives and

disclaims any right, title or interest in or to the AA Options, except for the Gifted Participation Interest;

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the Foundation to contribute the Gifted Participation Interest to DAF HoldCo, effective December 28, 2016;

FURTHER RESOLVED, that the officers of the Foundation are hereby authorized to execute and deliver such documents, and to take such other actions, as are appropriate to implement the purposes of the foregoing resolution, with such additional terms and conditions, consistent therewith, as may be approved by such officers; and

FURTHER RESOLVED, that this Written Consent may be validly executed by electronic means to the fullest extent permitted by Delaware law.

IN WITNESS WHEREOF, the undersigned, being all of the directors of the Foundation, have caused this Unanimous Written Consent to be executed effective as of December 28, 2016.

James Dondero

Grant Scott

Mary M. Jalonick

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ **11,144,507.85**

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ **1,480,887.59**

Total of Crusader Participations and Tracked Interests $ **12,625,395.44**

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality,

genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

EXHIBIT 47

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

James D. Dondero
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
James D. Dondero 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name | Middle name | Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: D. Michael Lynn, 420 Throckmorton Street, Suite 1000, Fort Worth, Texas, 76102

Contact phone: 8174056900

¨1¤}HV4$(S¤«
1023/Email: michael.lynn@bondsellis.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:29:06 p.m. Eastern Time
Title:
Company:

Optional Signature Address:
James D. Dondero
D. Michael Lynn
420 Throckmorton Street, Suite 1000
Fort Worth, Texas, 76102
Telephone Number:
8174056900
Email:
michael.lynn@bondsellis.com

VN: A70893C668A17E6B39B27C424F4F2E5C

Exhibit A

James Dondero ("Claimant") has paid a number of miscellaneous expenses for the benefit of the Debtor and/or its various related entities in an amount totaling not less than $100,000.00 as shown in the chart below. There are potentially additional payments, details of which may be provided after the Debtor completes its examination of its accounting records. Claimant has requested this information from the Debtor to ascertain the exact amount of his claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant will ascertain the exact amount of his claim in the next ninety days.

POC	Type of pmt	FBO Highland affiliate	Vendor	Amount	Description
James Dondero	Retainer	Neutra Ltd.	Levinger PC	$50,000.00	Neutra Ltd is 100% owned by HCMLP (as trustee for and on behalf of Acis CMOA Trust), which is owned 100% by Highland CLO Asset Holdings Limited, which is owned 75% by Dugaboy. Pmt was made by Jim for Dugaboy, via revolving loan agreement with the trust. Payment was made for a retainer for the law firm engaged for Acis appeals.
James Dondero	Expenses	HCMLP New York, Inc	Landlord for HCMLP NY	$30,000.00	HCMLP New York, Inc is owned 99% by Jim Dondero. Jim contributed funds so HCMLP NY could make its monthly rent payments.
James Dondero	Expenses	Brave Holdings III Inc.	CT Corp	$354.77	Jim Dondero is the President of Brave Holdings and paid for the entities DE annual filing.
James Dondero	Expenses	HCM Services, Inc.	CT Corp	$225.00	Highland Capital Management Services, Inc. is 75% owned by Jim Dondero. Mr. Dondero paid for Services DE annual filing.
James Dondero	Expenses	NREA Estates Inc.	CT Corp	$225.00	Jim Dondero is the President of NREA and paid for the entities annual DE filing.
James Dondero	Expenses	NREA Meritage Inc	CT Corp	$225.00	Jim Dondero is the President of NREA Meritage Inc. and paid for the entities annual DE filing.
James Dondero	Expenses	HCM AG	Stefan Pellar	$10,247.11	Highland Capital AG, a Swiss entity, is owned 100% by Dugaboy, pmt was made by JD. The expenses were for director fees.
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$5,333.40	Background check research re Bankruptcy
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$3,399.90	Background check research re Bankruptcy
James Dondero	Expenses	HCMLP	Crescent Research Svcs, Inc.	$3,240.00	Background check research re Bankruptcy

EXHIBIT 48

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexPoint Capital, Inc.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor ____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? ____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexPoint Capital, Inc. 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone 9726284100	Contact phone ____
Contact email See summary page	Contact email ____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) ____ Filed on ____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? ____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: NexPoint Capital, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4

1024[illegible]20040800000000048

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexPoint Capital, Inc.
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
9726284100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 08-Apr-2020 4:21:58 p.m. Eastern Time
Title:
Authorized Agent
Company:
NexPoint Capital, Inc.

VN: D4A7D128BEA0EFCEBDE7DC7BDE82620B

Exhibit A

NexPoint Capital, Inc. ("Claimant") may have a claim against the Debtor related to its rights under a Backstop Agreement, Joinder Agreement, and a Purchase and Sale Agreement with respect to 750,000 shares of American BankNote Corporation ("ABC"). Under the agreements, Claimant purchased shares from ABC and/or its selling shareholders. After Claimant purchased 700,000 shares of ABC, Claimant also was entitled to receive a fee of an additional 50,000 shares for a total of 750,000 shares. However, ABC's agent mistakenly recorded the shares in the Debtor's name rather than in the name of Claimant. Accordingly, Claimant may have a claim against the Debtor related to Claimant's rights under these agreements and the purchased shares. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 49

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   James D. Dondero
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   James D. Dondero
   James D. Dondero
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email bryan.assink@bondsellis.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name | Middle name | Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: D. Michael Lynn, 420 Throckmorton St., Suite 1000, Fort Worth, Texas, 76102

Contact phone: 8174056900

Email: michael.lynn@bondsellis.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
James D. Dondero
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:34:01 p.m. Eastern Time
Title:
Company:

Optional Signature Address:
James D. Dondero
D. Michael Lynn
420 Throckmorton St., Suite 1000
Fort Worth, Texas, 76102
Telephone Number:
8174056900
Email:
michael.lynn@bondsellis.com

VN: CFEE286C50D64DE4EF47977EF7799AC9

Exhibit A

James Dondero ("Claimant") was a limited partner in the Debtor in 2008. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to its limited partners, which may give rise to claim(s) against the Debtor. Certain of these limited partners were trusts which are or may be treated "pass-through" entities for tax purposes, with taxes to be paid by the trust grantor. Claimant may be entitled to the economic benefit of the tax distributions payable by the Debtor to such trusts, including, but not limited to, The Dugaboy Investment Trust, the Get Good Trust, the Get Good Non-Exempt Trust No. 1, the Get Good Non-Exempt Trust No. 2, the Get Better Trust, the Canis Major Trust, and the Canis Minor Trust. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of his claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of his claim and will update his claim in the next ninety days.

EXHIBIT 50

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   James D. Dondero
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   James D. Dondero
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email bryan.assink@bondsellis.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name Middle name Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: D. Michael Lynn, 420 Throckmorton St., Suite 1000, Fort Worth, TX, 76102

Contact phone: 8174056900

Email: michaellynn@bondselli$.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:39:52 p.m. Eastern Time
Title:
Company:

Optional Signature Address:
James D. Dondero
D. Michael Lynn
420 Throckmorton St., Suite 1000
Fort Worth, TX, 76102
Telephone Number:
8174056900
Email:
michael.lynn@bondsellis.com

VN: A70893C668A17E6B39B27C424F4F2E5C

Exhibit A

James Dondero ("Claimant") at all relevant time prior to the petition date was a director, officer, employee, agent, or representative of Strand Advisors, Inc., Debtor's general partner ("GP Party"). Pursuant to Section 4.1(h) of Debtor's Fourth Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"), as well as analogous sections in prior versions of the Partnership Agreement, a GP Party is owed indemnification by the Debtor for all matters enumerated in the Partnership Agreement, including, but not limited to, all liabilities, losses, and damages suffered by such GP Party by reason of any act performed or omitted to be performed in the name of or on behalf of the Debtor in connection with the Debtor's business. Claims subject to indemnification by Debtor have been made against Claimant, including, but not limited to, claims in *Daugherty v. Highland Capital Management, L.P. et al.*, C.A. No. 2017-0488 pending in the Court of Chancery of the State of Delaware, *Daugherty v. Dondero et al*. C.A. No. 2019-0956 pending in the Court of Chancery of the State of Delaware, and *Terry v. Highland Capital Management, L.P. et al.*, Cause No. DC-16-11396 pending in the 162nd District Court of Dallas County, Texas. Additionally, Acis Capital Management, L.P, and Acis Capital Management GP, LLC either have reserved rights or purported to seek relief against Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of his claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of his claim and will update his claim in the next ninety days.

EXHIBIT 51

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   James Dondero, as the successor-in-interest to the Canis Major Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?** A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	☑ No ☐ Yes. *Check all that apply:*	**Amount entitled to priority**
	☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_______
	☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_______
	☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_______
	☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_______
	☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_______
	☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_______
	* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.	
13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**	☑ No ☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. $_______	

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name James D. Dondero
First name Middle name Last name

Title ______

Company ______
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address D. Michael Lynn, 420 Throckmorton St., Suite 1000, Fort Worth, TX, 76102

Contact phone 8174056900

Email michael.lynn@bondsellis.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
James Dondero, as the successor-in-interest to the Canis Major Trust

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:42:55 p.m. Eastern Time

Title:

Company:

Optional Signature Address:
James D. Dondero
D. Michael Lynn
420 Throckmorton St., Suite 1000
Fort Worth, TX, 76102

Telephone Number:
8174056900

Email:
michael.lynn@bondsellis.com

VN: 16EAED15D8F07304DFFFA35A8D46892B

Exhibit A

James Dondero, as successor-in-interest to The Canis Major Trust ("Claimant"), is a limited partner in the Debtor. Debtor's tax return for 2008 is being audited and as a result the partnership and/or general partner may be liable to the limited partners. In addition, for certain years during the period from 2004 through 2018, the Debtor did not make tax distributions to the limited partners. Accordingly, Claimant may have a claim(s) against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim(s). This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 52

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   HCRE Partner, LLC
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
HCRE Partner, LLC 300 Crescent Court, Ste. 700 Dallas, TX 75201	
Contact phone	Contact phone
Contact email bryan.assink@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name Middle name Last name

Title: _____

Company: HCRE Partner, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: _____

Contact phone: _____

¨1¤}HV4$(Z~«
1024Email:20040800000000058

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
HCRE Partner, LLC
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:47:11 p.m. Eastern Time
Title:
Company:
HCRE Partner, LLC

VN: E06680EE00F9144D26F793E57FB2634B

Exhibit A

HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

EXHIBIT 53

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

NexVest, LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexVest, LLC Jason Rudd 3131 McKinney Ave. Suite 100 Dallas, TX 75204, United States	NexVest, LLC 2515 McKinney Ave., Suite 1100 United States Dallas, Texas 75201
Contact phone 2147404038	Contact phone
Contact email jason.rudd@wickphillips.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see addendum . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Promissory note - see attached addendum

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/James Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James Dondero
First name Middle name Last name

Title: Manager

Company: NexVest, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$(^O«
1024[illegible]20040800000000062

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexVest, LLC
Jason Rudd
3131 McKinney Ave.
Suite 100
Dallas, TX, 75204
United States
Phone:
2147404038
Phone 2:
Fax:
Email:
jason.rudd@wickphillips.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
NexVest, LLC
2515 McKinney Ave., Suite 1100
United States
Dallas, Texas, 75201
Phone:
Phone 2:
Fax:
E-mail:
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Promissory note - see attached addendum

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see addendum

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James Dondero on 08-Apr-2020 5:07:59 p.m. Eastern Time
Title:
Manager
Company:
NexVest, LLC

VN: 52E2E6CDDC9D55E317FC199E63A26000

Fill in this information to identify the case:

Debtor 1: Highland Capital Management, LP

Debtor 2 (Spouse, if filing): _____

United States Bankruptcy Court for the: Northern District of Texas

Case number: 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

NexVest, LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Wick Phillips Attn: Jason Rudd Name	NexVest, LLC Name
3131 McKinney Ave., Suite 100 Number Street	2515 McKinney Ave., Suite 1100 Number Street
Dallas TX 75204 City State ZIP Code	Dallas TX 75201 City State ZIP Code
Contact phone 214-740-4038	Contact phone _____
Contact email jason.rudd@wickphillips.com	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ see attached . **Does this amount include interest or other charges?**
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Promissory note, see attached addendum

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: $_____
Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

_____
Signature

Print the name of the person who is completing and signing this claim:

Name: James Dondero
First name | Middle name | Last name

Title: Manager

Company: NexVest, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2515 McKinney Ave., Suite 1100
Number Street

Dallas | TX | 75201
City | State | ZIP Code

Contact phone _____ Email _____

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

In re:	§	**Chapter 11**
	§	
Highland Capital Management, L.P.	§	**Case No. 19-34054**
	§	
Debtor.	§	

ATTACHMENT TO PROOF OF CLAIM

This attachment supplements the accompanying Proof of Claim (Official Form 410) and is hereby expressly incorporated into Official Form 410 as if set forth fully therein (collectively, the "Proof of Claim").

NexVest, LLC, (the "Claimant") files this Proof of Claim against Highland Capital Management, L.P. (the "Debtor"). Claimant holds a promissory note dated September 21, 2018, payable by HCRE Partners, LLC ("HCRE") in the original face amount of $44,719,991.57 (the "HCRE Note") scheduled to mature on September 21, 2020 (The "Maturity Date"). Claimant files this Proof of Claim in an abundance of caution to preserve and assert any claim or cause of action Claimant has or may have against Debtor regarding any action, omission or inaction by Debtor, or any party acting for or on behalf of Debtor, that impacts, impairs or delays Claimant's rights and remedies under the HCRE Note, including, without limitation, (i) Claimant's rights to timely collect and receive payment of all amounts due under the HCRE Note, including, without limitation, principal, interest, expenses, costs and fees; (ii) Claimant's rights to pursue or collect against any lien, security interest, pledge or collateral securing any obligation under or related to the HCRE Note; and (iii) Claimant's rights to pursue any claims, causes of action, requests for relief and remedies in contract, law or equity.

Without limiting the forgoing, Claimant expressly reserves any claim, request of relief or cause of action against Debtor for tortious interference of contract, breach of contract, and any other basis in contract, law or equity in any way related to the HCRE Note. This Proof of Claim includes, without limitation, the right to obtain attorneys' fees and defense costs, or other fees, expenses or obligations arising from all legal proceedings or governmental or private investigations/inquiries in which the Claimant may become involved after the filing of this Proof of Claim.

RESERVATION OF RIGHTS

By filing this Proof of Claim, the Claimant waives nothing and expressly reserves all rights, claims, privileges, benefits, obligations and defenses, whether at contract, law or equity.

The Claimant reserves, without limitation and to the fullest extent allowed by law, the right to amend, modify, renew, extend, restate and supplement, for any reason, this Proof of Claim, including, but not limited to, the right to amend amounts claimed, to assert any liquidated claim amount upon liquidation, and to reflect any additional or supplement amounts owed to the Claimant.

Without prejudice to the claims filed herein, the Claimant also preserves and asserts all claims entitled to priority under sections 503 and 507 of the Bankruptcy Code, or under any order of the Court.

The Claimant reserves all of its rights, claims and defenses, whether under the Bankruptcy Code or other laws, including as to any claims that may be asserted against the Claimant by the Debtor, its bankruptcy estate, successors and assigns of the Debtor or its bankruptcy estate, any trustee, plan agent or liquidating agent, any creditor, or any other person or entity, including, without limitation, any rights of setoff and recoupment.

By filing this Proof of Claim, the Claimant does not waive, and hereby preserves: (a) any obligation owed to the Claimant; (b) any interests, units or security held by the Claimant or for its benefit; (c) any right or rights of action that the Claimant has or may have against the Debtor, its bankruptcy estate or any other person or persons, including, without limitation, insurers, guarantors and sureties, as applicable; (d) any right to contest the validity, priority or extent of any lien, security interest or right purported to be equal, senior or inferior to any right of the Claimant; and (e) any and all rights and remedies at law or in equity available to the Claimant against the Debtor and any of its respective affiliates or subsidiaries, or any other person or entity.

The filing of this Claim shall not constitute: (i) a waiver, release or limitation of the Claimant's rights against any person, entity or property; (ii) a waiver, release or limitation of any rights, remedies, claims or interest of the Claimant, including without limitation, all rights and claims under sections 502 and 365 of the Bankruptcy Code, as applicable; (iii) a consent by the Claimant to the jurisdiction or venue of this Court or any other court with respect to the proceedings, if any, commenced in any case against or otherwise involving the Claimant with respect to the subject matter of the claims set forth in this Proof of Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced against or otherwise involving the Claimant; (iv) a waiver, release or limitation of the right of the Claimant to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related thereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the U.S. Constitution; (v) a consent by the Claimant to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto, pursuant

to 28 U.S.C. § 157(e) or otherwise; (vi) a waiver, release or limitation of the Claimant's right to have any and all final orders in any matters or proceedings entered only after de novo review by a United States District Court Judge; (vii) a waiver of the right to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding which may be commenced against or otherwise involving the Claimant; (viii) a consent to the determination of any liability to Claimant by any particular court, including, without limitation, this Court; (ix) a consent to the final determination or adjudication of any claim or right pursuant to 28 U.S.C. § 157(c); (x) an election of remedies; or (xi) a waiver or release of the Claimant's rights against any third party.

SUPPORTING DOCUMENTS

Documents referenced in support of the Proof of Claim will be made available either through providing a copy to the appropriate requesting persons or entities, or these documents shall be made available for inspection and copying during normal business hours at a mutually convenient location. Any request for such documents should be directed towards the Claimant's counsel as set forth in Form 410.

Respectfully submitted,

/s/ Jason M. Rudd

Jason M. Rudd
Texas Bar No. 24028786
Wick Phillips Gould & Martin, LLP
3131 McKinney Avenue, Suite 100
Dallas, TX 75204
Phone: (214) 692-6200
Fax: (214) 692-6255
Email: jrudd@wickphillips.com

COUNSEL FOR CLAIMANT

EXHIBIT 54

Claim #152 Date Filed: 4/8/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Hunter Mountain Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Hunter Mountain Trust
   c/o E. P. Keiffer
   Rochelle McCullough, LLP
   325 North St. Paul St., Suite 4500
   Dallas, TX 75201, United States

   Contact phone 214-580-2525
   Contact email pkeiffer@romclaw.com

   Where should payments to the creditor be sent? (if different)
   See summary page

   Contact phone 214.335.7969
   Contact email Jhonis@RandAdvisors.com

   (see summary page for notice party information)

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☐ No
   ☑ Yes. Claim number on court claims registry (if known) 70 Filed on 04.02.2020 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☐ No
   ☑ Yes. Who made the earlier filing? John Honis

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 60,298,739.00 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☐ No
   - ☑ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☑ Other. Describe: Common law and contractual setoff rights

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $60,298,739.00
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☐ No
    - ☑ Yes. Identify the property: Common law and contractual setoff rights - See Exhibit "A"

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020
MM / DD / YYYY

/s/John M. Honis
Signature

Print the name of the person who is completing and signing this claim:

Name: John M. Honis
First name | Middle name | Last name

Title: Trustee for Hunter Mountain Trust

Company: Hunter Mountain Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$( ]«
1024[illegible]20040800000000063

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
Hunter Mountain Trust
c/o E. P. Keiffer
Rochelle McCullough, LLP
325 North St. Paul St., Suite 4500
Dallas, TX, 75201
United States
Phone:
214-580-2525
Phone 2:
214.914.5625
Fax:
214.953.0185
Email:
pkeiffer@romclaw.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
Yes
Related Claim Filed By:
John Honis

Filing Party:
Authorized agent

Disbursement/Notice Parties:

Hunter Mountain Trust
c/o John Honis
Trustee for Hunter Mountain Trust
87 Railroad Place - Suite 403
Saratoga Springs, NE, 12866
United States
Phone:
214.335.7969
Phone 2:
214.335.7969
Fax:
214.335.7969
E-mail:
Jhonis@RandAdvisors.com
DISBURSEMENT ADDRESS

John Honis, Trustee for Hunter Mountain Trust
87 Railroad Place - Suite 403
Saratoga Springs, NE, 12866
United States
Phone:
214.335.7969
Phone 2:
214.335.7969
Fax:
214.335.7969
E-mail:
Jhonis@RandAdvisors.com

Other Names Used with Debtor:

Amends Claim:
Yes - 70, 04.02.2020
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
60,298,739.00

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
Yes: 60,298,739.00
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
Yes, Common law and contractual setoff rights - See Exhibit “A”

Nature of Secured Amount:
Other
Describe: Common law and contractual setoff rights
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:

John M. Honis on 08-Apr-2020 5:11:09 p.m. Eastern Time

Title:

Trustee for Hunter Mountain Trust

Company:

Hunter Mountain Trust

Optional Signature Address:

John M. Honis

, ,

Telephone Number:

Email:

EXHIBIT "A"

Hunter Mountain Trust (HMT) is the obligor under an original $63,000,000 Secured Promissory Note that HMT entered into with Highland Capital Management, L.P. (the "Debtor") as payee on or after December 21, 2015 (the "Secured Contribution Note") pursuant to the terms and conditions of the Contribution Agreement of even date where HMT made a cash contribution of $7,000,000 and issued the Secured Contribution Note for the balance of the $70,000,000 obligation detailed in the Contribution Agreement.

Just prior to the Petition Date, as of September 30, 2020, HMT was obligated to the Debtor in the amount of $56,873,209, with interest accruing thereafter with subsequently scheduled principal payments until the Secured Contribution Note comes due by its terms.

The amount of the claim stated on the proof of claim form ($60,298,739) is the maximum balance due by HMT to Debtor per the amortization schedule attached hereto if the Priority Distributions were timely made.

Notwithstanding denoting this amount as the maximum, the indemnity protect HMT from and against, *any and all losses* incurred or sustained by, or imposed upon it by virtue of the Debtor's failure to perform and such listed amount may necessarily increase over the stated amount in the proof of claim.

Pursuant to Section 6.02 of the Contribution Agreement (which caused the Secured Contribution Note to be executed and the cash contribution to be made) the Debtor (identified as the Partnership in the Contribution Agreement) agreed to indemnify HMT (identified as Contributor in the Contribution Agreement) as follows:

> **Section 6.02 Indemnification By the Partnership**. Subject to the other terms and conditions of this Article VI, the Partnership shall indemnify and defend Contributor and its trustees, sponsors, administrators, grantors, officers, directors, managers, Affiliates, beneficiaries, shareholders, members, partners, successors and assigns (collectively, the "Contributor Indemnified Parties") against, and shall hold the Contributor Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any Contributor Indemnified Parties based upon, arising out of, with respect to or by reason of:
>
> (a) any inaccuracy in or breach of any of the representations or warranties of the Partnership contained in this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party;
>
> (b) *any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Partnership pursuant to this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party*; and

(c) any and all actions, suits, proceedings, claims, demands and Losses incident to any of the foregoing or incurred in attempting to oppose the imposition thereof, or in enforcing this indemnity. [*emphasis added*]

While there are limitations on this indemnity, as detailed in Section 6.05, those limitations do not affect HMT's claim for indemnity for the Debtor's existing or future failures to address its obligation to make Priority Distributions to HMT as detailed first in the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 21, 2015 attached to the Contribution Agreement (all of which were retained in the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated December 24, 2015 – referenced in the Debtor's Schedule G):

3.9 (b) **Priority Distributions.** Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Partners[1] in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records; and

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year.

(iv) No later than December 24th of each year, commencing December 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

4.2 (e) **Default on Priority Distributions**. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

[1] HMT is the sole Class B Partner

With regard to missed Priority Distributions and Priority Distributions that likely will not occur hereinafter, HMT claims the maximum benefit available to it on account of the Indemnity referenced in Section 6.02 of the Contribution Agreement, with regard to the Debtor's obligation to fund Priority Distributions per the Fourth Amended and Restated Agreement of Limited Partnership, an "agreement or obligation to be performed by the Partnership pursuant to this Agreement or any of the other agreements contemplated hereby to which the Partnership is a party."

Pursuant to Section 6.05 (e) of the Contribution Agreement HMT's remedy is subject to the following restriction where Partnership is the Debtor and HMT is an Indemnified Party:

> (e) Subject to the limitations in this Section 6.05, any indemnification obligation of the Partnership under Section 6.02 shall not be payable to the Indemnified Party in cash, but shall instead be satisfied by a reduction in the principal balance of the Contribution Note for the amount of such indemnification obligation.

This provision of the Contribution Agreement, HMT, asserts, functionally sets up a contractual right of set off as to any claim by the Debtor under the Secured Contribution Note in addition to any common law right of set off which HMT may have as against any claims by the Debtor with regard to the any obligations due under the Secured Contribution Note.

Complete copies of documents supporting this proof of claim are available from counsel for HMT upon request.

HMT, prophylactically on account of the terms of the currently non-rejected Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., amends this claim with regard to the independent obligations of the Debtor under Section 3.9(b) of that document, to fund HMT as the holder of Class B Limited Partnership Interests and Class C Limited Partnership Interests in the amounts detailed therein as conditioned therein. HMT reserves the right to file an additional or further amended claim regarding this independent obligation, should the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., be rejected at some later date, pursuant to and consistent with ¶7 of *the Order (I) Establishing Bar Dates For Filing Claims And (Ii) Approving The Form And Manner Of Notice Thereof* [Docket No. 488].

Scheduled Amortization through 2023

"Purchase" Notes*

Principal Outstanding 9/30/19				$ 65,009,113
Payment Date	Interest Due	Principal Due	Total Payment Due	Ending Principal Bal
12/24/19	1,696,738	1,052,118	2,748,855	63,956,995
12/24/20	1,673,851	1,181,995	2,855,846	62,775,000
12/24/21	1,638,428	4,185,000	5,823,428	58,590,000
12/24/22	1,529,199	4,185,000	5,714,199	54,405,000
12/24/23	1,419,971	4,185,000	5,604,971	50,220,000

* Comprised of four underlying notes owed to each of the Seller's of LP interests

"Contribution" Note

Principal Outstanding 9/30/19				$ 56,873,209
Payment Date	Interest PIK'd	Principal Due	Total Payment Due	Ending Principal Bal
12/21/19	1,094,855	-	-	57,968,065
12/21/20	1,517,112	-	-	59,485,176
12/21/21	1,552,563	739,001	739,001	60,298,739
12/21/22	1,573,797	5,000,000	5,000,000	56,872,536
12/21/23	1,484,373	5,000,000	5,000,000	53,356,909

EXHIBIT 55

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Highland Capital Management Services, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 972-628-4100	Contact phone
Contact email See summary page	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Capital Management Services, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$7 !B«
1024Email:20042300000000001

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Capital Management Services, Inc.
300 Crescent Court, Suite 700
Dallas, TX, 75201
Phone:
972-628-4100
Phone 2:
Fax:
Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Nature of Secured Amount:

Value of Property:

Amount of 503(b)(9):
No

Annual Interest Rate:

Based on Lease:
No

Arrearage Amount:

Basis for Perfection:

Subject to Right of Setoff:
No

Amount Unsecured:

Submitted By:
Frank George Waterhouse on 23-Apr-2020 4:48:04 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Capital Management Services, Inc.

VN: 5501B525C7542DC8BC98EC478820DEB7

Exhibit A

Highland Capital Management Services, Inc. ("Claimant"), an investor in certain funds managed by the Debtor, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., and/or Highland Restoration Capital Partners Master, L.P., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor's Fourth Amended and Restated Limited Partnership Agreement and that certain Management Agreement dated as of November 15, 2007, by and between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., and/or Highland Restoration Capital Partners Master, L.P. and Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager's actions or inactions in managing these funds.

EXHIBIT 56

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   Highland Capital Management Services, Inc.
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

   ☑ No

   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 9726284100	Contact phone
Contact email See summary page	Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

   ____

4. **Does this claim amend one already filed?**

   ☑ No

   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ☑ No

   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2020
MM / DD / YYYY

/s/Frank George Waterhouse
Signature

Print the name of the person who is completing and signing this claim:

Name: Frank George Waterhouse
First name Middle name Last name

Title: Authorized Agent

Company: Highland Capital Management Services, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4$7 "P«
1024Email:20042300000000002

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Highland Capital Management Services, Inc.
Highland Capital Management Services, Inc.
300 Crescent Court, Suite 700

Dallas, TX, 75201

Phone:
9726284100
Phone 2:

Fax:

Email:
fwaterhouse@highlandcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Frank George Waterhouse on 23-Apr-2020 4:54:16 p.m. Eastern Time
Title:
Authorized Agent
Company:
Highland Capital Management Services, Inc.

VN: C35FDBACAC98EC49FD6963503CCD3BDF

Exhibit A

Highland Capital Management Services, Inc. ("Claimant"), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor's Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager's actions or inactions in managing these funds.

EXHIBIT 57

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   The Dugaboy Investment Trust
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   The Dugaboy Investment Trust
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email gscott@myersbigel.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Trustee

Company: The Dugaboy Investment Trust
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4140 Park Lake Ave., Suite 600, Raleigh, NC, 27612

Contact phone: 919-854-1407

¨1¤}HV4$7 #^«
1023 Email: scott@dugaboy.com

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
The Dugaboy Investment Trust
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
gscott@myersbigel.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 23-Apr-2020 5:01:59 p.m. Eastern Time
Title:
Trustee
Company:
The Dugaboy Investment Trust

Optional Signature Address:
Grant Scott
4140 Park Lake Ave., Suite 600
Raleigh, NC, 27612
Telephone Number:
919-854-1407
Email:
gscott@myersbigel.com

VN: 65752F35DCEED8B0205CA4C7932BA53B

Exhibit A

The Dugaboy Investment Trust ("Claimant"), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor's Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager's actions or inactions in managing these funds.

EXHIBIT 58

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   NexBank SSB
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexBank SSB 2515 McKinney Ave. Suite 1100 Dallas, TX 75201, USA	
Contact phone 972-934-4701	Contact phone
Contact email john.holt@nexbankcapital.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☐ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2020
MM / DD / YYYY

/s/John Holt
Signature

Print the name of the person who is completing and signing this claim:

Name: John Holt
First name Middle name Last name

Title: President and CEO

Company: NexBank SSB
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

¨1¤}HV4$7 $l«
1024Email20042300000000004

Contact phone _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
NexBank SSB
2515 McKinney Ave. Suite 1100
Dallas, TX, 75201
USA
Phone:
972-934-4701
Phone 2:
Fax:
Email:
john.holt@nexbankcapital.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
None

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
John Holt on 23-Apr-2020 5:28:17 p.m. Eastern Time
Title:
President and CEO
Company:
NexBank SSB

VN: BA537654E804C116CBB5FF816982DCC1

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   _____
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

   ❑ No
   ❑ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
NexBank SSB Name	_____ Name
2515 McKinney Ave. Suite 1100 Number Street	_____ Number Street
Dallas TX 75201 City State ZIP Code	_____ City State ZIP Code
Contact phone 972-934-4701	Contact phone _____
Contact email john.holt@nexbankcapital.com	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

   ❑ No
   ❑ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ❑ No
   ❑ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ❑ No
   - ❑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $See attached Exhibit "A". **Does this amount include interest or other charges?**
   - ❑ No
   - ❑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ❑ No
   - ❑ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ❑ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ❑ Motor vehicle
   - ❑ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ❑ Fixed
   - ❑ Variable

10. **Is this claim based on a lease?**
    - ❑ No
    - ❑ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ❑ No
    - ❑ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☐ No	
☐ Yes. *Check one:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

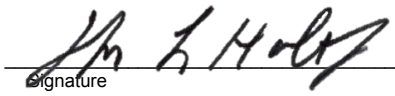
- ☐ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2020
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name: John Holt
First name | Middle name | Last name

Title: President & CEO

Company: NexBank SSB
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2515 McKinney Ave., Suite 1100
Number Street

Dallas | TX | 75201
City | State | ZIP Code

Contact phone 972-934-4701 Email john.holt@nexbankcapital.com

Print | Save As... | Add Attachment | Reset

Exhibit A

NexBank SSB ("Claimant"), an investor in certain accounts managed by the Debtor on behalf of Claimant, may have claims against the Debtor relating to the post-petition actions or inactions of the account investment manager pursuant to Debtor's Fourth Amended and Restated Limited Partnership Agreement, that certain Third Amended and Restated Investment Advisory Agreement, dated as of September 26, 2017 by and between NexBank, SSB and Debtor, the Third Amended and Restated Shared Services Agreement, dated as of September 26, 2017 by and between NexBank, SSB and Debtor, the Sub-Servicing Agreement – Shared National Credit Program dated January 1, 2014 by and between NexBank, SSB and Debtor, and each such agreement as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the account investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager's actions or inactions in managing these accounts.

EXHIBIT 59

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

James D. Dondero
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
James D. Dondero c/o D. Michael Lynn 420 Throckmorton St., Suite 1000 Fort Worth, TX 76102	James D. Dondero 300 Crescent Court, Ste. 700 Dallas, TX 75201
Contact phone 8174056900	Contact phone
Contact email michael.lynn@bondsellis.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name Middle name Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: ¨1¤}HV4%:
1024[illegible]20052600000000017

Contact phone: _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
c/o D. Michael Lynn
420 Throckmorton St., Suite 1000

Fort Worth, TX, 76102

Phone:
8174056900
Phone 2:

Fax:

Email:
michael.lynn@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
James D. Dondero

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

E-mail:

DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 26-May-2020 5:17:16 p.m. Eastern Time
Title:
Company:

VN: 20BE04C65B3A01C11B30E84BA5AFF790

Exhibit A

This claim is a contingent claim asserted by James Dondero and is subject to any effort to collect on certain notes (the "Notes") identified on Schedule "A" hereto. In the event that collection efforts are made to collect the Notes, James Dondero asserts that the Notes were issued by him for funds advanced in lieu of compensation.

Schedule A (as of March 31, 2020)

Entity	Amount	Note
NexPoint Advisors	$23,034,644.034	30 yr Amort (issued 2017)
Dugaboy	$18,286,268.159	30 yr Amort (issued 2017)
Highland Capital Management Fund Advisors	$10,458,219.887	Demand
James Dondero	$8,834,769.71	Demand
Highland Capital Management Services	$6,572,061	30 yr Amort (issued 2017)
HCRE	$5,671,419	30 yr Amort (issued 2017)
HCRE	$4,521,267	Demand
Highland Capital Management Services	$927,177	Demand

EXHIBIT 60

Claim #198 Date Filed: 10/21/2020

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   CLO Holdco, Ltd.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	CLO Holdco, Ltd. c/o Grant Scott, Director Myers Bigel P.A. 4140 Park Lake Ave., Ste 600 Raleigh, NC 27612, United States
Contact phone 214-777-4200	Contact phone
Contact email jkane@krcl.com	Contact email gscott@myersbigel.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☐ No
   ☑ Yes. Claim number on court claims registry (if known) 133 Filed on 04/08/2020 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 0.00 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Participation and Tracking Interests in investment funds

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/21/2020
MM / DD / YYYY

/s/Grant Scott
Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Counsel

Company: CLO Holdco, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV4*5 0`«
1024Email20210210000000016

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
CLO Holdco, Ltd.
Kane Russell Coleman Logan PC, John J Kane
901 Main Street, Suite 5200
Dallas, Texas, 75202
United States
Phone:
214-777-4200
Phone 2:
Fax:
Email:
jkane@krcl.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Disbursement/Notice Parties:
CLO Holdco, Ltd.
c/o Grant Scott, Director
Myers Bigel P.A.
4140 Park Lake Ave., Ste 600
Raleigh, NC, 27612
United States
Phone:
Phone 2:
Fax:
E-mail:
gscott@myersbigel.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
Yes - 133, 04/08/2020
Acquired Claim:
No

Basis of Claim:
Participation and Tracking Interests in investment funds

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
0.00

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Grant Scott on 21-Oct-2020 5:53:37 p.m. Eastern Time
Title:
Counsel
Company:
CLO Holdco, Ltd.

VN: 454F3BC9208175459685E9A6D8E2BD38

Fill in this information to identify the case:

Debtor 1: Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing):

United States Bankruptcy Court for the: Northern District of Texas

Case number: 19-34054-sgj11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

CLO Holdco, Ltd.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Kane Russell Coleman Logan PC, John J Kane Name	CLO Holdco, Ltd., Grant Scott, Director Name
901 Main Street, Suite 5200 Number Street	Myers Bigel P.A., 4140 Park Lake Ave., Ste 600 Number Street
Dallas TX 75202 City State ZIP Code	Raleigh NC 27612 City State ZIP Code
Contact phone 214.777.4200	Contact phone
Contact email jkane@krcl.com	Contact email gscott@myersbigel.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☐ No
☑ Yes. Claim number on court claims registry (if known) 133 Filed on 04/08/2020
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 0.00 . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Participation and Tracking Interests in investment funds

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10 21 2020
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Grant Scott
First name Middle name Last name

Title: Counsel (Myers Bigel Sibley & Sajovec, P.A.)

Company: CLO Holdco, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4140 Park Lake Ave., Suite 600
Number Street

Raleigh NC 27612
City State ZIP Code

Contact phone _____ Email gscott@myersbigel.com

SUMMARY OF AMENDED PROOF OF CLAIM

Debtor(s): Highland Capital Management, L.P. (the "**Debtor**")

Case Info: 19-34054-sgj11; United States Bankrutpcy Court, Northern District of Texas, Dallas Division

Creditor: CLO Holdco, Ltd. ("**CLO**")

A. **CLO's Proof of Claim**

1. Claim Amount. CLO filed its original Proof of Claim in the amount of $11,340,751.26, which evidenced the amount of CLO's claim against the Debtor as of October 16, 2019 (the "Petition Date"). CLO's claim consisted of participation interests and tracking interests in shares of certain funds, evidenced by certain transfer documents attached to this Summary. Below is a summary statement of accounts provided by the Debtor to CLO on October 24, 2019:

Participated & tracking interests

Partners Name	6/30/19 NAV	7/31/19 NAV	Redemptions payable (August 2019)	Total @ 7/31/19	8/31/19 NAV	Redemptions payable (August 2019)	Total @ 8/31/19
HCMLP comp	2,907,647	1,761,399	1,111,993	2,873,393	1,741,909	1,111,993	2,853,902
HCMLP prior	1,055,973	639,692	403,844	1,043,536	632,617	403,844	1,036,461
Eames, Ltd.	5,998,476	3,723,146	2,204,458	5,927,604	3,680,646	2,204,458	5,885,104
HCMLP (1)	360,805	223,946	132,597	356,544	221,391	132,597	353,989
HCMLP (2)	1,187,441	737,023	436,388	1,173,412	728,610	436,388	1,164,998
Total	$ 11,510,343	$ 7,085,207	$ 4,289,281	$ 11,374,488	$ 7,005,174	$ 4,289,281	$ 11,294,454

CLO understands that the Debtor has reached a settlement with the Redeemer Committee and the Highland Crusader Fund that will terminate the Debtor's and Eames, Ltd.'s interested in the Crusader funds in which CLO owns participation interests. According to the Debtor, the termination of the Debtor's interests in those funds served to cancel CLO's participation interests in the Debtor's interests in those funds. Accordingly, CLO's Claim Amount is reduced to **$0.00**.

2. Supporting Documentation. The total amount due and owing as of the Petition Date is evidenced by the following supporting documentation:

a. The Statement of Accounts provided above;

b. Debtor's List of Largest Unsecured Creditors;

c. Excerpt of Debtor's Schedules; and

d. Participation Interest and Tracking Interest transfer documents detailing transfer of ownership interests to CLO.

B. **Reservation of Rights**

By filing this amendment, CLO expressly reserves all of its rights to, among other things, amend this claim, file an administrative expense claim, file a rejection claim, and seek attorneys' fees and interest as allowed by law. If the Debtor objects to this amended Proof of Claim, CLO reserves the right to produce additional documents and facts as necessary to support its claim.

ATTACHMENT B

Fill in this information to identify your case:	
United States Bankruptcy Court for the:	
DISTRICT OF DELAWARE	
Case number *(If known)*	Chapter 11

☐ Check if this an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

4/19

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1.	**Debtor's name**	Highland Capital Management, L.P.	
2.	**All other names debtor used in the last 8 years** Include any assumed names, trade names and *doing business as* names		
3.	**Debtor's federal Employer Identification Number** (EIN)	75-2716725	
4.	**Debtor's address**	**Principal place of business** 300 Crescent Court Suite 700 Dallas, TX 75201 Number, Street, City, State & ZIP Code Dallas County	**Mailing address, if different from principal place of business** P.O. Box, Number, Street, City, State & ZIP Code **Location of principal assets, if different from principal place of business** Number, Street, City, State & ZIP Code
5.	**Debtor's website** (URL)	www.highlandcapital.com	
6.	**Type of debtor**	☐ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP)) ■ Partnership (excluding LLP) ☐ Other. Specify:	

Debtor Highland Capital Management, L.P. Case number (*if known*) _____

7. Describe debtor's business

A. *Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ■ None of the above

B. *Check all that apply*

- ☐ Tax-exempt entity (as described in 26 U.S.C. §501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- ■ Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes.

5259

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- ☐ Chapter 7
- ☐ Chapter 9
- ■ Chapter 11. *Check all that apply:*
  - ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).
  - ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
  - ☐ A plan is being filed with this petition.
  - ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
  - ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
  - ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.
- ☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

- ■ No.
- ☐ Yes.

District _____ When _____ Case number _____

District _____ When _____ Case number _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list

- ■ No
- ☐ Yes.

Debtor _____ Relationship _____

District _____ When _____ Case number, if known _____

Debtor Highland Capital Management, L.P. Case number (*if known*) _____

Name

11. **Why is the case filed in *this district?*** *Check all that apply:*

- ■ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. **Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

■ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

- ☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
  What is the hazard? _____
- ☐ It needs to be physically secured or protected from the weather.
- ☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- ☐ Other _____

Where is the property? _____

Number, Street, City, State & ZIP Code

Is the property insured?

- ☐ No
- ☐ Yes. Insurance agency _____
  Contact name _____
  Phone _____

Statistical and administrative information

13. **Debtor's estimation of available funds** *Check one:*

- ■ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available to unsecured creditors.

14. **Estimated number of creditors**

☐ 1-49	☐ 1,000-5,000	☐ 25,001-50,000
☐ 50-99	☐ 5001-10,000	☐ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than100,000
■ 200-999		

15. **Estimated Assets**

☐ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
☐ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	■ $100,000,001 - $500 million	☐ More than $50 billion

16. **Estimated liabilities**

☐ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
☐ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	■ $100,000,001 - $500 million	☐ More than $50 billion

Debtor Highland Capital Management, L.P.
Name

Case number (*if known*)

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is trued and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/16/2019
MM / DD / YYYY

X
Signature of authorized representative of debtor

Strand Advisors, Inc., General Partner
by: James D. Dondero, President
Printed name

Title

18. Signature of attorney

X
Signature of attorney for debtor

Date 10/16/2019
MM / DD / YYYY

James E. O'Neill
Printed name

Pachulski Stang Ziehl & Jones LLP
Firm name

919 N. Market Street
17th Floor
Wilmington, DE 19899
Number, Street, City, State & ZIP Code

Contact phone 302-652-4100 Email address joneill@pszjlaw.com

4042 DE
Bar number and State

ACTION BY WRITTEN CONSENT OF THE SOLE GENERAL PARTNER OF HIGHLAND CAPITAL MANAGEMENT, L.P. (a Delaware limited partnership)

The undersigned, being the sole general partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Company**"), hereby takes the following actions and adopts the following resolutions:

WHEREAS, the General Partner, acting pursuant to the laws of the State of Delaware, has considered the financial and operational aspects of the Company's business;

WHEREAS, the General Partner has reviewed the historical performance of the Company, the outlook for the Company's assets and overall performance, and the current and long-term liabilities of the Company;

WHEREAS, the General Partner has carefully reviewed and considered the materials presented to it by the management of and the advisors to the Company regarding the possible need to undertake a financial and operational restructuring of the Company; and

WHEREAS, the General Partner has analyzed each of the financial and strategic alternatives available to the Company, including those available on a consensual basis with the principal stakeholders of the Company, and the impact of the foregoing on the Company's business and its stakeholders.

NOW, THEREFORE, BE IT RESOLVED, that in the judgment of the General Partner, it is desirable and in the best interests of the Company, its creditors, partners, and other interested parties that a petition be filed by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware;

RESOLVED, that the officers of the General Partner (each, an "**Authorized Officer**") be, and each of them hereby is, authorized, empowered and directed on behalf of the Company to execute, verify and file all petitions, schedules, lists, and other papers or documents, and to take and perform any and all further actions and steps that any such Authorized Officer deems necessary, desirable and proper in connection with the Company's chapter 11 case, with a view to the successful prosecution of such case, including all actions and steps deemed by any such Authorized Officer to be necessary or desirable to the develop, file and prosecute to confirmation a chapter 11 plan and related disclosure statement;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to retain the law firm of Pachulski Stang Ziehl & Jones LLP ("**PSZ&J**") as bankruptcy counsel to represent and assist the Company in carrying out its duties under chapter 11 of the Bankruptcy Code, and to take any and all actions to advance the Company's rights in connection therewith, and the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and immediately upon the filing of the bankruptcy, and to cause to be filed an appropriate application for authority to retain the services of PSZ&J;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to retain and employ Development Specialists, Inc. ("***DSI***") to provide the Company with Bradley D. Sharp as chief restructuring officer ("***CRO***") and additional personnel to assist in the execution of the day to day duties as CRO. The CRO, subject to oversight of the General Partner will lead the Company's restructuring efforts along with the Company's advisors, and to take any and all actions to advance the Company's rights in connection therewith, and the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and immediately upon the filing of the bankruptcy petition, and to cause to be filed an appropriate application for authority to hire the CRO and his affiliated firm, DSI;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to employ any other professionals necessary to assist the Company in carrying out its duties under the Bankruptcy Code; and in connection therewith, the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to or immediately upon the filing of the chapter 11 case and cause to be filed appropriate applications with the bankruptcy court for authority to retain the services of any other professionals, as necessary, and on such terms as are deemed necessary, desirable and proper;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to obtain post-petition financing and obtain permission to use existing cash collateral according to terms which may be negotiated by or on behalf of the Company, and to enter into any guaranties and to pledge and grant liens on its assets as may be contemplated by or required under the terms of such post-petition financing or cash collateral arrangement; and in connection therewith, the Authorized Officers shall be, and each of them hereby is, hereby authorized, empowered and directed, on behalf of the Company, to execute appropriate loan agreements, cash collateral agreements and related ancillary documents;

RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, empowered and directed, on behalf of the Company, to take any and all actions, to execute, deliver, certify, file and/or record and perform any and all

documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities or certificates and to take any and all actions and steps deemed by any such Authorized Officer to be necessary or desirable to carry out the purpose and intent of each of the foregoing resolutions and to effectuate a successful chapter 11 case;

RESOLVED, that any and all actions heretofore taken by any Authorized Officer in the name and on behalf of the Company in furtherance of the purpose and intent of any or all of the foregoing resolutions be, and hereby are, ratified, confirmed, and approved in all respects.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have duly executed this Written Consent as of October 7, 2019.

STRAND ADVISORS, INC.
Sole General Partner of Highland Capital Management, L.P.

By: _____
James D. Dondero
President

SIGNATURE PAGE TO THE ACTION BY WRITTEN CONSENT OF THE SOLE GENERAL PARTNER OF HIGHLAND CAPITAL MANAGEMENT, L.P.

Fill in this information to identify the case:

Debtor name HIGHLAND CAPITAL MANAGEMENT, L.P.

United States Bankruptcy Court for the: District of Delaware (State)

Case number (If known): 19-

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders 12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1.	Redeemer Committee of the Highland Crusader Fund c/o Terri Mascherin, Esq. Jenner & Block 353 N. Clark Street Chicago, IL 60654-3456	Terri Mascherin Tel: 312.923.2799 Email: tmascherin@jenner.com	Litigation	Contingent Unliquidated Disputed			$189,314,946.00
2.	Patrick Daugherty c/o Thomas A. Uebler, Esq. McCollom D'Emilio Smith Uebler LLC 2751 Centerville Rd #401 Wilmington, DE 19808	Thomas A. Uebler Tel: 302.468.5963 Email: tuebler@mdsulaw.com	Litigation	Contingent Unliquidated Disputed			$11,700,000.00
3.	CLO Holdco, Ltd. Grant Scott, Esq. Myers Bigel Sibley & Sajovec, P.A. 4140 Park Lake Ave, Ste 600 Raleigh, NC 27612	Grant Scott Tel: 919.854.1407 Email: gscott@myersbigel.com	Contractual Obligation				$11,511,346.00

4.	McKool Smith, P.C. Gary Cruciani, Esq. McKool Smith 300 Crescent Court, Suite 1500 Dallas, TX 75201	Gary Cruciani Tel: 214.978.4009 Email: gcruciani@mckoolsmith.com	Professional Services	Contingent Unliquidated Disputed			$2,163,976.00
5.	Meta-e Discovery LLC Paul McVoy Six Landmark Square, 4th Floor Stamford, CT 6901	Paul McVoy Tel: 203.544.8323 Email: pmcvoy@metaediscovery.com	Professional Services				$1,852,348.54
6.	Foley Gardere Holly O'Neil, Esq. Foley & Lardner LLP 2021 McKinney Avenue Suite 1600 Dallas, TX 75201	Holly O'Neil Tel: 214.999.4961 Email: honeil@foley.com	Professional Services				$1,398,432.44
7.	DLA Piper LLP (US) Marc D. Katz, Esq. 1900 N Pearl St, Suite 2200 Dallas, TX 75201	Marc D. Katz Tel: 214.743.4534 Email: marc.katz@dlapiper.com	Professional Services				$994,239.53
8.	Reid Collins & Tsai LLP William T. Reid, Esq. 810 Seventh Avenue, Ste 410 New York, NY 10019	William T. Reid Tel: 512.647.6105 Email: wreid@rctlegal.com	Professional Services				$625,845.28
9.	Joshua & Jennifer Terry c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201	Brian Shaw Tel: 214. 239.2707 email: shaw@roggedunngroup.com	Litigation	Contingent Unliquidated Disputed			$425,000.00
10.	NWCC, LLC c/o of Michael A. Battle, Esq. Barnes & Thornburg, LLP 1717 Pennsylvania Ave N.W. Ste 500 Washington, DC 20006-4623	Michael A. Battle Tel: 202.371.6350 Email: mbattle@btlaw.com	Litigation	Contingent Unliquidated Disputed			$375,000.00
11.	Duff & Phelps, LLC c/o David Landman Benesch, Friedlander, Coplan & Aronoff LLP 200 Public Square, Suite 2300 Cleveland, OH 44114-2378	David Landman Tel: 216.363.4593 Email: dlandman@beneschlaw.com	Professional Services				$350,000.00

12.	American Arbitration Association 120 Broadway, 21st Floor, New York, NY 10271	Elizabeth Robertson, Director Tel: 212.484.3299 Email: robertsone@adr.org	Professional Services				$292,125.00
13.	Lackey Hershman LLP Paul Lackey, Esq. Stinson LLP 3102 Oak Lawn Avenue, Ste 777 Dallas, TX 75219	Paul Lackey Tel: 214.560.2206 Email: paul.lackey@stinson.com	Professional Services				$246,802.54
14.	Bates White, LLC Karen Goldberg, Esq. 2001 K Street NW, North Bldg Suite 500 Washington, DC 20006	Karen Goldberg Tel: 202.747.2093 Email: karen.goldberg@bateswhite.com	Professional Services				$235,422.04
15.	Debevoise & Plimpton LLP c/o Accounting Dept 28th Floor 919 Third Avenue New York, NY 10022	Michael Harrell Tel: 212-909-6349 Email: mpharrell@debevoise.com	Professional Services				$179,966.98
16.	Andrews Kurth LLP Scott A. Brister, Esq. 111 Congress Avenue, Ste 1700 Austin, TX 78701	Scott A. Brister Tel: 512.320.9220 Email: ScottBrister@andrewskurth.com	Professional Services				$137,637.81
17.	Connolly Gallagher LLP 1201 N. Market Street 20th Floor Wilmington, DE 19801	Ryan P. Newell Tel: 302.888.6434 Email: rnewell@connollygallagher.com	Professional Services				$118,831.25
18.	Boies, Schiller & Flexner LLP 5301 Wisconsin Ave NW Washington, DC 20015-2015	Scott E. Gant Tel: 202.237.2727 Email: sgant@bsfllp.com	Professional Services				$115,714.80
19.	UBS AG, London Branch and UBS Securities LLC c/o Andrew Clubock, Esq. Latham & Watkins LLP 555 Eleventh Street NW Suite 1000 Washington, DC 20004-130	Andrew Clubock Tel: 202.637.3323 email: Andrew.Clubok@lw.com	Litigation	Contingent Unliquidated Disputed			Unliquidated

20.	Acis Capital Management, L.P. and Acis Capital Management GP, LLC c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201	Brian Shaw Tel: 214. 239.2707 email: shaw@roggedunngroup.com	Litigation	Contingent Unliquidated Disputed			Unliquidated

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the Debtor, certifies that the following is a corporation other than the Debtor, or a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or states that there are no entities to report under FRBP 7007.1.

☑ None [*check if applicable*]

Name:
Address:

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with rule 1007(a)(3) for filing in this Chapter 11 Case:

Name: Strand Advisors, Inc.
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Dugaboy Investment Trust
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: Mark K. Okada
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Mark and Pamela Okada Family Trust – Exempt Trust #1
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: The Mark and Pamela Okada Family Trust – Exempt Trust #2
Address: 300 Crescent Court
Suite 700
Dallas, TX 75201

Name: Hunter Mountain Investment Trust
Address: c/o Rand Advisors LLC
John Honis
87 Railroad Place Ste 403
Saratoga Springs, NY 12866

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-_____ (___)
Debtor.	)	

CERTIFICATION OF CREDITOR MATRIX

Pursuant to Rule 1007-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the above captioned debtor (the "Debtor") hereby certifies that the *Creditor Matrix* submitted herewith contains the names and addresses of the Debtor's creditors. To the best of the Debtor's knowledge, the *Creditor Matrix* is complete, correct, and consistent with the Debtor's books and records.

The information contained herein is based upon a review of the Debtor's books and records as of the petition date. However, no comprehensive legal and/or factual investigations with regard to possible defenses to any claims set forth in the *Creditor Matrix* have been completed. Therefore, the listing does not, and should not, be deemed to constitute: (1) a waiver of any defense to any listed claims; (2) an acknowledgement of the allowability of any listed claims; and/or (3) a waiver of any other right or legal position of the Debtor.

Fill in this information to identify the case:

Debtor name Highland Capital Management, L.P.

United States Bankruptcy Court for the: DISTRICT OF DELAWARE

Case number (If known) _____

☐ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* _____
- ■ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ■ Other document that requires a declaration **Corporate Ownership Statement, List of Equity Holders, Creditor Matrix Certification**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/16/2019

x _____

Signature of individual signing on behalf of debtor

Frank Waterhouse

Printed name

Treasurer of Strand Advisors, Inc., General Partner

Position or relationship to debtor

ATTACHMENT C

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206E/F
Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. **Do any creditors have priority unsecured claims?** (See 11 U.S.C. § 507).

☐ No. Go to Part 2.

☑ Yes. Go to line 2.

2. **List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part.** If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

			Total claim	Priority amount
2.1	Priority creditor's name and mailing address **All Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	As of the petition filing date, the claim is: *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**	**Unknown**
	Date or dates debt was incurred **2019**	Basis for the claim: **Employee Wages & Bonuses**		
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	Is the claim subject to offset? ☑ No ☐ Yes		

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. **List in alphabetical order all of the creditors with nonpriority unsecured claims**. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

			Amount of claim
3.1	**Nonpriority creditor's name and mailing address** **45 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**
	Date(s) debt was incurred **2017, 2018 & 2019** **Last 4 digits of account number** _	**Basis for the claim:** **Deferred Awards** Is the claim subject to offset? ☑ No ☐ Yes	
3.2	**Nonpriority creditor's name and mailing address** **46 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☐ Unliquidated ☐ Disputed	**$5,758,166.67**
	Date(s) debt was incurred **2018** **Last 4 digits of account number** _	**Basis for the claim:** **Prior year employee bonuses** Is the claim subject to offset? ☑ No ☐ Yes	

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.32	**Nonpriority creditor's name and mailing address** **Centroid** **1050 Wilshire Dr.** **Ste #170** **Troy, MI 48084** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,155.00**
3.33	**Nonpriority creditor's name and mailing address** **Chase Couriers, Inc** **1220 Champion Circle** **#114** **Carrollton, TX 75006** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$155.81**
3.34	**Nonpriority creditor's name and mailing address** **CLO Holdco, Ltd.** **c/o Grant Scott, Esq** **Myers Bigel Sibley & Sajovec, P.A.** **4140 Park Lake Ave, Ste 600** **Raleigh, NC 27612** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed **Basis for the claim:** **Contractual Obligation** Is the claim subject to offset? ☑ No ☐ Yes	**$11,340,751.26**
3.35	**Nonpriority creditor's name and mailing address** **Cole Schotz** **Court Plaza North** **25 Main Street** **P.O. Box 800** **Hackensack, NJ 07602-0800** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$198,760.29**
3.36	**Nonpriority creditor's name and mailing address** **Coleman Research Group, Inc.** **120 West 45th St** **25th Floor** **New York, NY 10036** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$52,500.00**
3.37	**Nonpriority creditor's name and mailing address** **Concur Technologies, Inc.** **18400 NE Union Hill Road** **Redmond, WA 98052** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$4,090.46**
3.38	**Nonpriority creditor's name and mailing address** **Connolly Gallagher LLP** **1201 North Market Street** **20th Floor** **Wilmington, DE 19801** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$118,831.25**

ATTACHMENT D

CHARITABLE DAF GP, LLC (THE "COMPANY")
IN ITS CAPACITY AS GENERAL PARTNER OF
CHARITABLE DAF FUND, LP

WRITTEN RESOLUTIONS OF THE MANAGING MEMBER OF THE COMPANY
AS GENERAL PARTNER OF CHARITABLE DAF FUND, LP

1. INTRODUCTION

1.1 **IT IS NOTED** that:

(a) the Company is general partner of Charitable DAF Fund, LP (the "**Partnership**"), a Cayman Islands exempted limited partnership;

(b) the partnership agreement of the Partnership confers upon the Company, as general partner of the Partnership, broad power to manage the affairs and conduct the business of the Partnership; and

(c) all references in these resolutions to things being done by the Partnership shall be construed as to things being done by the Company as general partner of the Partnership.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Partnership has received an investment contribution from its 99% limited partner, Charitable DAF HoldCo, Ltd. ("**Charitable DAF HoldCo**"), consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Partnership owns 100% of CLO HoldCo, Ltd. ("**CLO HoldCo**");

(c) the Partnership contributed and transferred the Investments to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (such contribution and transfer, together with the receipt of the Investments, together the "**Prior Transfer**");

(d) each of CLO HoldCo and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

(e) the Partnership has received an investment contribution from Charitable DAF HoldCo consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**");

(f) the Partnership wishes to contribute and transfer the AA Participation Interest to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**"); and

(g) the Managing Member of the Company is of the view that the Proposed Transaction falls within the purpose and investment limitation and restrictions as set out in the partnership agreement of the Partnership.

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Partnership hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Managing Member of the Company, the entry into the Proposed Transaction generally by the Company and/or the Partnership would be in the best interests of the Company and the Partnership (as applicable);

(c) the Company, in its capacity as the general partner of the Partnership, hereby approves the Proposed Transaction, effective as of December 28, 2016;

(d) the Company and/or the Partnership does give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Managing Member or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of the Proposed Transaction and the Company and/or the Partnership do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Managing Member of the Company or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Managing Member or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company and/or the Partnership; and

(f) any Ancillary Documents, where required to be executed by the Company and/or the Partnership (whether under hand or as a deed), be executed by the signature thereof of the Managing Member or any Attorney or Authorised Signatory

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Managing Member, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Managing Member or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Managing Member or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the

foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Managing Member prior to such action being taken.

Grant James Scott

Managing Member

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ **11,144,507.85**

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ **1,480,887.59**

Total of Crusader Participations and Tracked Interests $ **12,625,395.44**

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ **8,710,000.00**

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED EFFECTIVE DECEMBER 28, 2016

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1. DIRECTOR'S INTEREST

1.1 **IT IS NOTED** that:

(a) the sole Director discloses an interest in the matters the subject of these resolutions as a Managing Member of Charitable DAF GP, LLC, general partner of Charitable DAF Fund, LP (the "**Partnership**");

(b) such Director therefore:

(i) is to be considered as interested in any contract or proposed contract or arrangement (the "**transaction**") with the foregoing; and

(ii) requests that the foregoing be treated as general notice of such interests; and

(c) pursuant to the articles of association of the Company:

(i) a Director may vote in respect of any transaction notwithstanding that he may be interested therein; and

(ii) if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Director at which any such transaction shall come before the meeting for consideration.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Company is the sole limited partner of the Partnership;

(c) the Company contributed and transferred the Investments to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (the "**Prior Transfer**");

(d) each of the Company and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto (the "**AA Options Transfer**");

(e) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**"); and

(f) the Company desires to contribute and transfer the AA Participation Interest to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**").

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Company hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Director, the entry into and performance by the Company of its obligations under the Proposed Transaction generally would be in the best interests of the Company;

(c) the transactions contemplated by the Proposed Transaction be approved;

(d) the Company do give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by the Proposed Transaction and the Company do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Director or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Director or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company; and

(f) the Ancillary Documents, where required to be executed by the Company (whether under hand or as a deed), be executed by the signature thereof of the Director or any Attorney or Authorised Signatory and where required to be sealed, by affixing thereto of the Seal of the Company, witnessed as required by the Articles of Association of the Company.

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things

and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

[Signature page follows]

Grant James Scott

Director

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
American Airlines Call Options				
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000% $	8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

DONATIVE ASSIGNMENT OF INTERESTS

RECITALS

WHEREAS, The Get Good Nonexempt Trust (the "Trust") is a Texas trust created under a Trust Agreement dated June 29, 2001 (the "Partnership Agreement"); and

WHEREAS, the Trust previously gave, donated and assigned all of the assets list on Exhibit A attached hereto to Highland Dallas Foundation, Inc. (the "Prior Donative Assignment"); and

WHEREAS, the Trust wishes to rescind and nullify the portion of the Prior Donative Assignment consisting of call options (the "AA Options") of American Airlines Group, Inc. as set forth on Exhibit A attached hereto; and

WHEREAS, the Trust owns all of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "Participation Interest"); and

WHEREAS, Grant James Scott, in the exercise of his discretion as Trustee of the Trust, has approved the distribution of the Participation Interest as a charitable contribution to Highland Dallas Foundation, Inc., a permissible beneficiary of the Trust which is a tax exempt public charity that is a supporting organization described in Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Trustee of the Trust wishes to give and assign the Participation Interest to Highland Dallas Foundation, Inc. effective December 28; 2016;

TRANSFER AND ASSIGNMENT

NOW, THEREFORE, the Trustee of the Trust hereby rescinds and nullifies the AA Option Donative Assignment; and

The Trustee of the Trust hereby gives, donates and assigns the Participation Interest to Highland Dallas Foundation, Inc.

This donative assignment is to be effective as 5:00 p.m. CST, December 28, 2016.

THE GET GOOD NONEXEMPT TRUST

By: _____
Grant James Scott, Trustee

The undersigned hereby acknowledges that it (i) is aware of this donative assignment of interests from The Get Good Nonexempt Trust to Highland Dallas Foundation, Inc., and (ii) agrees to be bound by this donative assignment.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.
Its General Partner

By: _____
James Dondero, President

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
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HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
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Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
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Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests					$ 12,625,395.44

American Airlines Call Options CALL AAL JAN 40 1/20/17	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any

representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

HIGHLAND DALLAS FOUNDATION, INC.

Unanimous Written Consent of Directors
In Lieu of Meeting

THE UNDERSIGNED, being all of the directors of Highland Dallas Foundation, Inc. ("Foundation"), a Delaware nonprofit nonstock corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, and hereby direct that this Written Consent be filed with the minutes of the proceedings of the Board of Directors of the Foundation:

WHEREAS, the Foundation received and accepted a gift from The Get Good Nonexempt Trust created by Trust Agreement dated June 29, 2001 (the "Trust") consisting of the assets listed on Exhibit A attached hereto (collectively, the "Prior Gifted Interests"), effective December 28, 2016;

WHEREAS, the Foundation and Get Good desire to rescind and nullify the portion of the Prior Gifted Interests consisting of call options (the "AA Options") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

WHEREAS, the Foundation has received and hereby accepts a gift from the Trust consisting of the assets listed on Exhibit B attached hereto, effective December 28, 2016, which includes a participation interest in the AA Options (the "Gifted Participation Interest"); and

WHEREAS, the Foundation currently owns 100 Participating Shares in Charitable DAF HoldCo, Ltd. ("DAF HoldCo"), a Cayman Islands exempted company, which shares represent one-third of the economic value of DAF HoldCo; and

WHEREAS, the Foundation's interest in DAF HoldCo has produced significant returns for the Foundation that are used in furtherance of its exempt purposes and those of its supported organization; and

WHEREAS, the directors of the Foundation, after careful consideration, believe it is in the best interests of the Foundation and its supported organization to contribute the Gifted Participation Interest to DAF HoldCo;

NOW, THEREFORE, be it hereby

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the rescission and nullification of the gift of the AA Options, and the Foundation hereby irrevocably and unconditionally fully and forever waives and

disclaims any right, title or interest in or to the AA Options, except for the Gifted Participation Interest;

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the Foundation to contribute the Gifted Participation Interest to DAF HoldCo, effective December 28, 2016;

FURTHER RESOLVED, that the officers of the Foundation are hereby authorized to execute and deliver such documents, and to take such other actions, as are appropriate to implement the purposes of the foregoing resolution, with such additional terms and conditions, consistent therewith, as may be approved by such officers; and

FURTHER RESOLVED, that this Written Consent may be validly executed by electronic means to the fullest extent permitted by Delaware law.

IN WITNESS WHEREOF, the undersigned, being all of the directors of the Foundation, have caused this Unanimous Written Consent to be executed effective as of December 28, 2016.

James Dondero

Grant Scott

Mary M. Jalonick

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
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Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

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Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality,

genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

EXHIBIT 61

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   CLO HoldCo, Ltd.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
CLO HoldCo, Ltd. Louis M. Phillips 301 Main Street Ste. 1600 Baton Rouge, LA 70801	CLO HoldCo, Ltd. 2101 Cedar Springs Road Ste. 1200 Dallas, TX 75201
Contact phone Contact email louis.phillips@kellyhart.com	Contact phone Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☐ No
   ☑ Yes. Claim number on court claims registry (if known) 198 Filed on 04/08/22 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ unknown, see addendum p 10 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Participation and Tracking Interest in investment funds, see addendum

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/11/2022
MM / DD / YYYY

/s/Mark Patrick
Signature

Print the name of the person who is completing and signing this claim:

Name: Mark Patrick
First name Middle name Last name

Title: Director

Company: CLO HoldCo, Ltd.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____

¨1¤}HV6!+ 2`«
1024Email220111000000000018

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
CLO HoldCo, Ltd.
Louis M. Phillips
301 Main Street
Ste. 1600
Baton Rouge, LA, 70801
Phone:
Phone 2:
Fax:
Email:
louis.phillips@kellyhart.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
CLO HoldCo, Ltd.
2101 Cedar Springs Road
Ste. 1200
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
E-mail:
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
Yes - 198, 04/08/22
Acquired Claim:
No

Basis of Claim:
Participation and Tracking Interest in investment funds, see addendum

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
unknown, see addendum p 10

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Mark Patrick on 11-Jan-2022 9:04:55 p.m. Eastern Time
Title:
Director
Company:
CLO HoldCo, Ltd.

VN: 629650836DA8F3C9C338621AE3DAAADE

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

In re:	§	**Case No. 19-34054-sgj11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
	§	**Relates to Claim Nos. 133 and 198**
Debtor	§	

ADDENDUM TO AMENDED PROOF OF CLAIM

CLO HoldCo, Ltd. ("CLO HoldCo") files this *Addendum to Amended Proof of Claim*, which relates to the Proof of Claim submitted herewith which amends Proof of Claim 198 (the "First Amended CLO HoldCo Crusader Claim"), which amended Proof of Claim No. 133 (the "Initial Claim").

BASIS FOR CLAIM

A. HCMLP Crusader Interest and the Participation and Tracking Interest

1. The above-captioned debtor ("HCMLP" or the "Debtor") served as investment manager for the Highland Crusader Funds (the "Crusader Funds") which were formed between 2000 and 2002 consisting of the Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund"), and the capital through the Onshore Crusader Fund and Offshore Crusader Fund was pooled into a Master Fund. *See* Partial Final Award, AAA Case No. 01-16-0002-6927 ("Partial Final Award") §IA,2.[1]

[1] The pleadings in the Arbitration are available to HCMLP and the Litigation Trustee. Pursuant to the Court's *Agreed Protective Order* [Dkt. No. 382], parties have previously identified pleadings in the Arbitration as designated Highly Confidential and only subject to disclosure under the procedures set forth in Local Rule 9077-1. CLO HoldCo quotes relevant provisions of such pleadings herein and will provide such pleadings as necessary pursuant to applicable procedures.

2. During the 2008 market decline, HCMLP was flooded with redemption request from Crusader Fund investors, and on October 15, 2008, HCMLP placed the Crusader Funds in wind-down, "compulsorily redeeming" Crusader Fund's limited partnership interests. *Id*. at §II. Pursuant to a 2011 adoption of the negotiated "Plan and Scheme," HCMLP was to manage, sell, and distribute assets with the Committee of Redeemers in the Highland Crusader Fund (the "Redeemer Committee") to oversee the process with an increased level of influence. *Id*.

3. According to that certain *Participation Interest and the Tracking Interest Schedule*, HCMLP granted certain participation interest (the "Participation Interest") in certain participating shares of the Onshore Crusader Fund and the Offshore Crusader Fund ("HCLMP Crusader Interest") and a tracking interest (the "Tracking Interest") in certain participating shares of the HCLMP Crusader Interest. *See* Attachment A [Schedule I, the Participation and Tracking Interest].

4. The Participation and Tracking Interest were expressly freely assignable and the obligations thereunder owed by HCMLP to the holder of the Participation and Tracking Interest. *Id*.

5. The Participation and Tracking Interest were received and accepted by Highland Dallas Foundation, Inc. from The Get Good Nonexempt Trust pursuant to a Unanimous Written Consent of Directors in Lieu of Meeting dated December 28, 2016 ("HDF Consent"). See Attachment B - Transfer Documents. The HDF Consent further contributed the Participation and Tracking Interest to the Charitable DAF HoldCo, Ltd. ("DAF HoldCo") *Id*.

6. Charitable DAF Holdco the contributed the Participation and Tracking Interest to Charitable DAF Fund, LP ("DAF Fund"). *See* Transfer Documents. Finally, DAF Fund

contributed and transferred the Participation and Tracking Interest to CLO HoldCo by Written Resolution effective December 28, 2016. *See* Transfer Documents.

7. CLO HoldCo is thus the holder of the Participation and Tracking Interest.

8. Pursuant to the Participation and Tracking Interest Schedule, HCMLP agreed that:

> Subject to any applicable tax withholding, **HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP** (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and **proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds")**. Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, **HCMLP shall promptly pay to the holder of the Tracking Interest** an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and **proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares.** Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.
>
> *See* Participation and Tracking Interest Schedule (emphasis added).

9. As such, HCMLP is obligated to pay to CLO HoldCo (as holder of the Participation Interest and Tracking Interest) the proceeds of any sale, assignment, or other disposition of any interest with respect to or in the HCMLP Crusader Interest.

B. The Arbitration

10. The Redeemer Committee terminated HCMLP on July 5, 2016 (effective August 4, 2016), and on July 6, 2016, the Redeemer Committee filed a Notice of Claim before the AAA commencing arbitration case No. 01-16-0002-6927 (the "Arbitration") against HCMLP. Partial

Final Award. On October 14, 2016, the Redeemer Committee amended its Notice of Claim and asserted willful misconduct and violation of fiduciary and contractual duties by HCMLP as investment manager of the Crusader Funds. *Id.*

11. An evidentiary hearing in the Arbitration took place over several days in September 2018, and certain post hearing briefing occurred until the Arbitration record was declared closed on December 12, 2018. *Id*. at §II. On March 6, 2019, the Arbitration panel issued a Partial Final Award. In part, the panel explained that from December 2013 through January 2016, HCMLP purchased twenty-seven Plan Claims (as defined in the Plan and Scheme) from Crusader Funds investors without approval of the Redeemer Committee. *Id*., §III(H).

12. The panel found that the Redeemer Committee would have exercised its right of first refusal ("ROFR") as to those Plan Claims if it had been given full information by HCMLP and had HCMLP not been preventing the exercise of the ROFR by invoking a certain TRO and misrepresenting to buyers that it had ROFR. *Id*. The panel thus determined that HCMLP breached the Plan and Scheme and its fiduciary duty to the Redeemer Committee and ordered HCMLP to transfer the purchased Plan Claims to the Redeemer Committee. *Id*.

13. As to the calculation of damages owed by HCMLP, the panel rejected the Redeemer Committee's methodology (that the fair market value of each of the Plan Claims was the NAV). *Id*. at ¶H,24.

14. Instead, the panel adopted the alternative approach of rescission, and ordered HCMLP "to transfer the [Plan Claims] to the Redeemer Committee, to pay to the [Redeemer Committee] whatever financial benefits [HCMLP] received from the transactions, less what [HCMLP] paid for the Plan Claims, plus interest at the rate of 9%, from the date of each purchase." *Id*. at ¶H,25.

15. The panel left the hearing open so that the parties could supplement by subsequent damages analyses. *Id*., s*ee* Final Award, ¶E,b,7.

16. On May 9, 2019, the panel issued the *Final Award* (the "Final Award"). The Final Award adopts the previous awards and made certain clerical corrections, and made final awards, including: ordering that the HCMLP purchased Plan Claims be transferred to the Redeemer Committee for benefit of the Crusader Funds or the Redeemer Committee cause the Crusader Funds to extinguish those claims, and for damages in the amount of $3,106,414. *See Id*., ¶F.

17. Because CLO HoldCo was not a party to the Arbitration, it does not have access to the models provided by the parties. But the panel was clear that the damages amount was to be net of the price paid by HCMLP for the Plan Claims, meaning that HCMLP received a credit against the damages award by virtue of the transfer or extinguishment of the HCMLP Crusader Interest.

18. The exact amount of this credit is unknown to CLO HoldCo, but known to HCMLP and will be elicited through the discovery process now that this is a contested matter. However, upon information and belief, the credit is estimated to be at least $3,788,932 (which amount was calculated using some Crusader Fund documents to which CLO HoldCo has access, as HCMLP documents and Arbitration documents are not available to CLO HoldCo), and up to an amount that is the difference between the amount of the award ($3,106,414), and the initial Crusader valuation of its claim ($8,897,899), or up to the difference of $5,791,485 (this difference very likely reflects the credit for the purchase price paid by HCMLP). CLO HoldCo reserves the right to further amend upon receipt of the records of HCMLP, which should establish the precise purchase price paid for the interests.

19. After the Final Award was entered, the Redeemer Committee then moved to confirm the Final Award in Chancery Court and HCMLP brought certain procedural challenges in a Motion to Vacate, essentially arguing that the Partial Final Award should have been the final award. *See* Dkt. No. 1089, ¶¶17-19. The pleadings in the Chancery Court have been filed under seal pursuant to a protective order, but according to the HCMLP, it did not challenge any of the factual findings, credibility assessments, or substantive legal conclusion rendered by the panel. *Id.* at ¶19.

C. The HCMLP Bankruptcy Case

20. On October 6, 2019, the motion to confirm the Final Award and Motion to Vacate were scheduled to be heard by the Chancery Court, and HCMLP filed a petition for relief under chapter 11 of the Bankruptcy Code commencing the Bankruptcy Case. *See id.* and Dkt. No. 1.

21. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of $190,824,557.00, plus "post-petition interest, attorneys' fees, costs and other expenses that [allegedly] continue[d] to accrue." Proof of Claim No. 72. On April 6, 2020, the Crusader Funds filed a general unsecured claim in the amount of $23,483,446.00, plus "post-petition interest, attorneys' fees, costs and other expenses. Proof of Claim No. 81

22. On April 8, 2020, CLO HoldCo filed Proof of Claim No. 133 (the "Initial Proof of Claim") which asserted a claim for the Participation Interests and Tracking Interests. *See Summary of Proof of Claim,* Original Proof of Claim.

23. CLO HoldCo attached the Participation and Tracking Interest Schedule as well as documents detailing the transfer of ownership to CLO HoldCo. *Id.*

24. CLO HoldCo expressly reserved the right to amend the Initial Proof of Claim. *Id.* at ¶B.

25. On July 16, 2020, the Bankruptcy Court entered the *Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 entered July 16, 2020* (Dkt. No. 854) (the "July 16 Order"), authorizing HCMLP to retain James Seery ("Mr. Seery") as CEO and CRO. Under Mr. Seery's direction, on September 23, 2020, HCMLP filed the *Debtor's Motion For Entry Of An Order Approving Settlements With (A) The Redeemer Committee Of The Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1089] (the "Redeemer Settlement Motion").

26. In the Redeemer Settlement Motion, HCMLP stated that: pursuant to the Final Award, the Redeemer Committee was awarded damages of $190,824,557.00, inclusive of interest (the "Damage Award"). Redeemer Settlement Motion, ¶16. In the Redeemer Settlement Motion, HCMLP explained the terms of the proposed settlement relevant hereto as:

> The Debtor and Eames will each (a) consent to the cancellation of certain interests in the Crusader Funds held by them that the Panel found were wrongfully acquired, and (b) agree that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable DAF that the Panel also found were wrongfully acquired.

Id. at ¶23.

27. On September 24, 2020, HCMLP filed the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1090] (the "Morris Declaration"). The Morris Declaration attached the actual Settlement Agreement (the "Redeemer Settlement") which provides, in pertinent part:

> The Debtor and Eames each consent to the Crusader Funds, on or after the date an order of the Bankruptcy Court approving this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code becomes a final and non-appealable order (the "Stipulation Effective Date"), cancelling or extinguishing all of the limited partnership interests and shares in the Crusader Funds held by each of them respectively (collectively, the "Cancelled Highland and Eames Interests"), as provided for in the Arbitration Award. Each of the Debtor and Eames represents solely for itself that (a) it has the authority to consent to the cancellation or extinguishment of the Cancelled Highland and Eames Interests that it holds, and (b) upon the occurrence of the Stipulation Effective Date, no other actions by or on behalf of it are necessary for such cancellation or extinguishment. Each of the Debtor and Eames agrees that it will not object to the Crusader Funds, on or after the Stipulation Effective Date, cancelling or extinguishing the limited partnership interests or shares in the Crusader Funds held by Charitable DAF (the "Cancelled DAF Interests," and together with the Cancelled Highland and Eames Interests, the "Cancelled LP Interests"). Each of the Debtor and Eames acknowledges that the cancellation or extinguishment of the Cancelled LP Interests is intended to implement Sections F.a.v and F.a.x.2 of the Final Award.

Attachment G, Settlement Agreement.

28. On October 20, 2020, the Bankruptcy Court held a hearing on Redeemer Settlement Motion. Dkt. No. 1271. At the hearing, the Bankruptcy Court approved the Redeemer Settlement. *Id*.

29. On October 21, 2020, CLO HoldCo amended its Initial Proof of Claim and filed the CLO HoldCo Crusader Claim, stating that; "**[a]ccording to Debtor**, the termination of Debtor's interests in Crusader funds served to cancel CLO HoldCo's participation interests in Debtor's interests accordingly the claim amount is reduce to $0.00." *See* Proof of Claim No. 198 (emphasis added).

30. It is important to note that at the time CLO HoldCo filed the First Amended CLO HoldCo Crusader Claim upon information conveyed from HCMLP, **HCMLP served as investment advisor to Charitable DAF Fund, L.P. ("DAF Fund"), and Charitable DAF GP, LLC ("DAF GP")** pursuant to that certain *Second Amended and Restated Investment Advisory Agreement effective January 1, 2017* (the "Investment Advisory Agreement"). As has previously

been detailed to the Court, DAF Fund is the sole shareholder of CLO HoldCo. *See* Dkt. No. 2547, ¶21. So upon information from its sole shareholder's investment advisor concerning the HCMLP Crusader Interest, CLO HoldCo amended its claim to $0, with reservation.

31. Although the CLO HoldCo Crusader Claim was amended to $0.00, CLO HoldCo attached the Participation and Tracking Interest Schedule and identified its claim against CLO HoldCo as one arising from Participation and Tracking Interests in investment funds. *Id*. CLO HoldCo further expressly reserved the right to amend its claim and to produce additional documents as necessary to support its claim. *Id*. at ¶B.

32. On October 22, 2020, the Bankruptcy Court entered the *Order Approving Debtor's Settlement With (A) The Redeemer Committee Of The Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), And Authorizing Actions Consistent Therewith* [Dkt. No. 1273] (the "Redeemer Settlement Order").

33. The Redeemer Settlement Order approved the Redeemer Settlement in all respects, including the cancellation of the HCMLP Crusader Interest and damage award which is net of the credit HCMLP was awarded for the purchase price.

34. As such, CLO HoldCo is owed whatever credit HCMLP received by virtue of the cancellation of the HCMLP Crusader Interest in the Arbitration (i) pursuant to the applicable Participation and Tracking Interest Schedule, HCMLP is required to pay to CLO HoldCo the proceeds of any disposition of any interest with respect to or in the HCMLP Crusader Interest; (ii) in the Arbitration, the HCMLP Crusader Interest was disposed of and in return, HCMLP received a credit against the damage award for the purchase price of the cancelled the HCMLP Crusader Interest; and (iii) HCMLP therefore received proceeds of a disposition of the HCMLP Crusader Interest through this credit and owes payment of those amounts to CLO HoldCo.

DOCUMENTATION SUPPORTING CLAIM

	Description
A	Schedule I, the Participation and Tracking Interest
B	Transfer Documents
	Arbitration Documents available to CLO HoldCo will be submitted to the Court as necessary or requested in accordance with applicable orders and Local Rules

CALCULATION OF CLAIM

As set forth herein, the amount of the claim is unknown to CLO HoldCo because CLO HoldCo is not a party to the Arbitration and therefore does not know the amount of the credit received by HCMLP for the purchase price of the HCMLP Crusader Interest, nor the purchase price HCMLP paid for the HCMLP Crusader Interest. Upon information and belief, the credit is estimated to be at least $3,788,932 (which amount was calculated using some Crusader Fund documents to which CLO HoldCo has access, as HCMLP documents and Arbitration documents are not available to CLO HoldCo), and up to an amount that is the difference between the amount of the award ($3,106,414), and the initial Crusader valuation of its claim ($8,897,899), or up to the difference of $5,791,485 (this difference very likely reflects the credit for the purchase price paid by HCMLP). CLO HoldCo reserves the right to further amend upon receipt of the records of HCMLP, which should establish the precise purchase price paid for the interests.

RESERVATION OF RIGHTS

The filing of the Second Amended Crusader Proof of Claim is not, and shall not be deemed or construed as:

a. a consent by CLO HoldCo to the jurisdiction of the Bankruptcy Court or any other United States Court with respect to proceedings, if any, pending or commenced in any case against or otherwise involving CLO HoldCo;

b. a waiver or release of CLO HoldCo's right to trial by jury in any proceeding as to any and all matters if triable herein, whether or not the same be designated legal or private rights in any case, controversy, or proceeding related hereto, notwithstanding any designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution;

c. a consent by CLO HoldCo to a jury trial in this Bankruptcy Court or any other court in any proceeding as to any and all matters if triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise;

d. a waiver or release of CLO HoldCo's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Judge;

e. a waiver of CLO HoldCo's rights to move to withdraw the reference with respect to the subject matter of this proof of claim, any objection thereto or other proceeding which may be commenced or continued in these cases against or otherwise involving CLO HoldCo; or,

f. an election of remedies.

CLO HoldCo further reserves the right to assert the claims set forth herein against any third parties that may be liable for such claims with the Debtor, including but not limited to current or former officers, directors or board members of the Debtor; representatives of the Debtor; agents or employees of the Debtor, individually and as representatives of the Debtors. CLO HoldCo reserves the right to further amend or to supplement the Second Amended Crusader Proof of Claim.

Attachment A

Schedule I, the Participation and Tracking Interest

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests					
Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		**$ 11,144,507.85**
Tracking interests					
Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		**$ 1,480,887.59**
Total of Crusader Participations and Tracked Interests					**$ 12,625,395.44**

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	**$ 8,710,000.00**

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them;

any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Attachment B

Transfer Documents

CHARITABLE DAF GP, LLC (THE "COMPANY")
IN ITS CAPACITY AS GENERAL PARTNER OF
CHARITABLE DAF FUND, LP

WRITTEN RESOLUTIONS OF THE MANAGING MEMBER OF THE COMPANY
AS GENERAL PARTNER OF CHARITABLE DAF FUND, LP

1. INTRODUCTION

1.1 **IT IS NOTED** that:

(a) the Company is general partner of Charitable DAF Fund, LP (the "**Partnership**"), a Cayman Islands exempted limited partnership;

(b) the partnership agreement of the Partnership confers upon the Company, as general partner of the Partnership, broad power to manage the affairs and conduct the business of the Partnership; and

(c) all references in these resolutions to things being done by the Partnership shall be construed as to things being done by the Company as general partner of the Partnership.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Partnership has received an investment contribution from its 99% limited partner, Charitable DAF HoldCo, Ltd. ("**Charitable DAF HoldCo**"), consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Partnership owns 100% of CLO HoldCo, Ltd. ("**CLO HoldCo**");

(c) the Partnership contributed and transferred the Investments to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (such contribution and transfer, together with the receipt of the Investments, together the "**Prior Transfer**");

(d) each of CLO HoldCo and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

(e) the Partnership has received an investment contribution from Charitable DAF HoldCo consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**");

(f) the Partnership wishes to contribute and transfer the AA Participation Interest to CLO HoldCo effective as of December 28, 2016, provided CLO HoldCo assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**"); and

(g) the Managing Member of the Company is of the view that the Proposed Transaction falls within the purpose and investment limitation and restrictions as set out in the partnership agreement of the Partnership.

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Partnership hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Managing Member of the Company, the entry into the Proposed Transaction generally by the Company and/or the Partnership would be in the best interests of the Company and the Partnership (as applicable);

(c) the Company, in its capacity as the general partner of the Partnership, hereby approves the Proposed Transaction, effective as of December 28, 2016;

(d) the Company and/or the Partnership does give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Managing Member or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of the Proposed Transaction and the Company and/or the Partnership do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Managing Member of the Company or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Managing Member or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company and/or the Partnership; and

(f) any Ancillary Documents, where required to be executed by the Company and/or the Partnership (whether under hand or as a deed), be executed by the signature thereof of the Managing Member or any Attorney or Authorised Signatory

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Managing Member, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Managing Member or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Managing Member or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the

foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Managing Member prior to such action being taken.

Grant James Scott

Managing Member

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED EFFECTIVE DECEMBER 28, 2016

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1. DIRECTOR'S INTEREST

1.1 **IT IS NOTED** that:

(a) the sole Director discloses an interest in the matters the subject of these resolutions as a Managing Member of Charitable DAF GP, LLC, general partner of Charitable DAF Fund, LP (the "**Partnership**");

(b) such Director therefore:

(i) is to be considered as interested in any contract or proposed contract or arrangement (the "**transaction**") with the foregoing; and

(ii) requests that the foregoing be treated as general notice of such interests; and

(c) pursuant to the articles of association of the Company:

(i) a Director may vote in respect of any transaction notwithstanding that he may be interested therein; and

(ii) if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Director at which any such transaction shall come before the meeting for consideration.

2. CONTRIBUTION AND TRANSFER

2.1 **IT IS NOTED** that

(a) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit A attached hereto (collectively, the "**Investments**");

(b) the Company is the sole limited partner of the Partnership;

(c) the Company contributed and transferred the Investments to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the Investments as of that date (the "**Prior Transfer**");

(d) each of the Company and the Partnership desire to rescind and nullify the portion of the Prior Transfer consisting of the call options (the "**AA Options**") of American Airlines Group, Inc. set forth on Exhibit A attached hereto (the "**AA Options Transfer**");

(e) the Company has received an investment contribution from one of its Participating Shareholders consisting of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "**AA Participation Interest**"); and

(f) the Company desires to contribute and transfer the AA Participation Interest to the Partnership effective as of December 28, 2016, provided the Partnership assumes and agrees to perform all obligations and assume all liabilities with respect to the AA Participation Interest as of that date (the "**Proposed Transaction**").

2.2 **IT IS RESOLVED** that:

(a) as of the date first written above, the AA Options Transfer is hereby rescinded and nullified, and the Company hereby irrevocably and unconditionally fully and forever waives and disclaims any right, title or interest in or to the AA Options, except for the AA Participation Interest;

(b) in the opinion of the Director, the entry into and performance by the Company of its obligations under the Proposed Transaction generally would be in the best interests of the Company;

(c) the transactions contemplated by the Proposed Transaction be approved;

(d) the Company do give, make, sign, execute and deliver all such notes, deeds, agreements, letters, notices, certificates, acknowledgments, instructions, fee letters and other documents (whether of a like nature or not) (the "**Ancillary Documents**") as may in the sole opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be considered necessary or desirable for the purpose of the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by the Proposed Transaction and the Company do all such acts and things as might in the opinion and absolute discretion of the Director or any Attorney or Authorised Signatory be necessary or desirable for the purposes stated above;

(e) the Ancillary Documents be in such form as the Director or any Attorney or Authorised Signatory in their absolute discretion and opinion approve, the signature of the Director or any Attorney or Authorised Signatory on any of the Ancillary Documents being due evidence for all purposes of his approval of the terms thereof on behalf of the Company; and

(f) the Ancillary Documents, where required to be executed by the Company (whether under hand or as a deed), be executed by the signature thereof of the Director or any Attorney or Authorised Signatory and where required to be sealed, by affixing thereto of the Seal of the Company, witnessed as required by the Articles of Association of the Company.

3. GENERAL AUTHORISATION

3.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "**Attorney**" or "**Authorised Signatory**" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things

and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

4. RATIFICATION OF PRIOR ACTIONS

4.1 **IT IS RESOLVED** that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

[Signature page follows]

Grant James Scott

Director

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
American Airlines Call Options				
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000% $	8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests	$ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader

Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

DONATIVE ASSIGNMENT OF INTERESTS

RECITALS

WHEREAS, The Get Good Nonexempt Trust (the "Trust") is a Texas trust created under a Trust Agreement dated June 29, 2001 (the "Partnership Agreement"); and

WHEREAS, the Trust previously gave, donated and assigned all of the assets list on Exhibit A attached hereto to Highland Dallas Foundation, Inc. (the "Prior Donative Assignment"); and

WHEREAS, the Trust wishes to rescind and nullify the portion of the Prior Donative Assignment consisting of call options (the "AA Options") of American Airlines Group, Inc. as set forth on Exhibit A attached hereto; and

WHEREAS, the Trust owns all of the assets listed on Exhibit B attached hereto, which includes a participation interest in the AA Options (the "Participation Interest"); and

WHEREAS, Grant James Scott, in the exercise of his discretion as Trustee of the Trust, has approved the distribution of the Participation Interest as a charitable contribution to Highland Dallas Foundation, Inc., a permissible beneficiary of the Trust which is a tax exempt public charity that is a supporting organization described in Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Trustee of the Trust wishes to give and assign the Participation Interest to Highland Dallas Foundation, Inc. effective December 28; 2016;

TRANSFER AND ASSIGNMENT

NOW, THEREFORE, the Trustee of the Trust hereby rescinds and nullifies the AA Option Donative Assignment; and

The Trustee of the Trust hereby gives, donates and assigns the Participation Interest to Highland Dallas Foundation, Inc.

This donative assignment is to be effective as 5:00 p.m. CST, December 28, 2016.

THE GET GOOD NONEXEMPT TRUST

By: _____
Grant James Scott, Trustee

The undersigned hereby acknowledges that it (i) is aware of this donative assignment of interests from The Get Good Nonexempt Trust to Highland Dallas Foundation, Inc., and (ii) agrees to be bound by this donative assignment.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.
Its General Partner

By: _____
James Dondero, President

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
American Airlines Call Options CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.000000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests					$ 12,625,395.44

American Airlines Call Options CALL AAL JAN 40 1/20/17	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any

representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

HIGHLAND DALLAS FOUNDATION, INC.

Unanimous Written Consent of Directors
In Lieu of Meeting

THE UNDERSIGNED, being all of the directors of Highland Dallas Foundation, Inc. ("Foundation"), a Delaware nonprofit nonstock corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, and hereby direct that this Written Consent be filed with the minutes of the proceedings of the Board of Directors of the Foundation:

WHEREAS, the Foundation received and accepted a gift from The Get Good Nonexempt Trust created by Trust Agreement dated June 29, 2001 (the "Trust") consisting of the assets listed on Exhibit A attached hereto (collectively, the "Prior Gifted Interests"), effective December 28, 2016;

WHEREAS, the Foundation and Get Good desire to rescind and nullify the portion of the Prior Gifted Interests consisting of call options (the "AA Options") of American Airlines Group, Inc. set forth on Exhibit A attached hereto;

WHEREAS, the Foundation has received and hereby accepts a gift from the Trust consisting of the assets listed on Exhibit B attached hereto, effective December 28, 2016, which includes a participation interest in the AA Options (the "Gifted Participation Interest"); and

WHEREAS, the Foundation currently owns 100 Participating Shares in Charitable DAF HoldCo, Ltd. ("DAF HoldCo"), a Cayman Islands exempted company, which shares represent one-third of the economic value of DAF HoldCo; and

WHEREAS, the Foundation's interest in DAF HoldCo has produced significant returns for the Foundation that are used in furtherance of its exempt purposes and those of its supported organization; and

WHEREAS, the directors of the Foundation, after careful consideration, believe it is in the best interests of the Foundation and its supported organization to contribute the Gifted Participation Interest to DAF HoldCo;

NOW, THEREFORE, be it hereby

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the rescission and nullification of the gift of the AA Options, and the Foundation hereby irrevocably and unconditionally fully and forever waives and

disclaims any right, title or interest in or to the AA Options, except for the Gifted Participation Interest;

RESOLVED, that the Board of Directors of the Foundation hereby approves and authorizes the Foundation to contribute the Gifted Participation Interest to DAF HoldCo, effective December 28, 2016;

FURTHER RESOLVED, that the officers of the Foundation are hereby authorized to execute and deliver such documents, and to take such other actions, as are appropriate to implement the purposes of the foregoing resolution, with such additional terms and conditions, consistent therewith, as may be approved by such officers; and

FURTHER RESOLVED, that this Written Consent may be validly executed by electronic means to the fullest extent permitted by Delaware law.

IN WITNESS WHEREOF, the undersigned, being all of the directors of the Foundation, have caused this Unanimous Written Consent to be executed effective as of December 28, 2016.

James Dondero

Grant Scott

Mary M. Jalonick

Exhibit A

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P, dated March 28, 2013, as amended from time to time).

The following call options of American Airlines Group, Inc., a Delaware corporation:

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Assigned	Total Est. MV Assigned
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

A participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interest and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "Participation Interest") granted by Highland Capital Management, L.P. "HCMLP") in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Shares").

Participation and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

Evidence of Participations and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interest and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interest and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interest and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interest an amount equal to such holder's share of each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interest, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Underlying Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph, no holder shall have, by reason of the Participation Interest or the Tracking Interest, any rights with respect to the Participating Shares or the Tracking Shares.

Nonrecourse Participation Interest and Tracking Interest. The Interest and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality, genuineness, validity, sufficiency or enforceability of the Participating Interest, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interest or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, HCMLP shall administer the Participation Interest and the Tracking Interest and enforce its rights, with respect to the Participating Shares and the Tracking Shares in the same manner as if it had not granted the Participation Interest or the Tracking Interest but owned the Participating Shares the Tracking Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interest or the Tracking Interest.

Assignment. Each holder of the Participation Interest or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

Exhibit B

$2,032,183.24 (based on 11/30/16 NAV) Series A Interests of Highland Capital Loan Fund, L.P. (as defined in the Limited Partnership Agreement of Highland Capital Loan Fund, L.P. dated March 28, 2013, as amended from time to time).

A participation interest in certain call options of American Airlines Group, Inc., and a participation interest and a tracking interest in certain participating shares of Highland Crusader Fund, L.P. and Highland Crusader Fund II, Ltd., in each case, as more particularly described on Schedule I attached hereto.

Schedule I

The Participation Interests and the Tracking Interest

The following sets forth the terms and conditions with respect to (i) a participation interest (the "AA Participation Interest") granted by Highland Capital Management, L.P. ("HCMLP") in certain call options (the "AA Options") of American Airlines Group, Inc. ("AA"), (i) a participation interest (the "Crusader Participation Interest", and together with the AA Participation Interest, the "Participation Interests") granted by HCMLP in certain participating shares of Highland Crusader Fund, L.P. (the "Onshore Crusader Fund") and Highland Crusader Fund II, Ltd. (the "Offshore Crusader Fund", and such participating shares collectively, the "Participating Crusader Shares"), and (ii) a tracking interest (the "Tracking Interest") in certain participating shares of the Onshore Crusader Fund (the "Tracking Crusader Shares").

Participation Interests and Tracking Interest

Crusader Participation Interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Amount Participated	Total NAV Participated
HCMLP comp	Highland Capital Management, LP	Crusader Fund II, Ltd.	$ 3,185,728.54	100.00%	$ 3,185,728.54
HCMLP prior	Highland Capital Management, LP	Crusader Fund II, Ltd.	1,158,673.19	100.00%	1,158,673.19
Eames, Ltd.	Eames, Ltd.	Crusader Fund, LP	6,581,643.01	100.00%	6,581,643.01
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	12.86%	50,968.60
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	12.86%	167,494.51
Totals			$ 12,625,395.44		$ 11,144,507.85

Tracking interests

Account Name	Legal Owner	Feeder Fund Investment	11/30/16 NAV per statement	Tracking Amount	Total Tracked Interest
HCMLP (1)	Highland Capital Management, LP	Crusader Fund, LP	396,467.54	87.14%	345,498.94
HCMLP (2)	Highland Capital Management, LP	Crusader Fund, LP	1,302,883.16	87.14%	1,135,388.65
Totals			$ 1,699,350.70		$ 1,480,887.59

Total of Crusader Participations and Tracked Interests $ 12,625,395.44

American Airlines Call Options	# Contracts	12/27/16 MV	Amount Participated	Total Est. MV Participated
CALL AAL JAN 40 1/20/17	10,000	8,710,000.00	100.0000%	$ 8,710,000.00

Evidence of Participation Interests and the Tracking Interest. HCMLP shall maintain records of all payments received from or owed by the holder of the Participation Interests and the Tracking Interest and all payments made or owed by HCMLP to the holder of the Participation Interests and the Tracking Interest.

Payments by and to HCMLP with respect to the Participation Interests and the Tracking Interest. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Participation Interests an amount equal to such holder's share of (i) each amount received and applied by HCMLP in payment of distributions and proceeds of any sale, assignment or other disposition of any interest in, or exercise of, the AA Options comprising the AA Participation Interest, (ii) each amount received and applied by HCMLP (or Eames, Ltd., a wholly-owned subsidiary of HCMLP, if applicable) in payment of distributions, Plan Claims (as defined in the Joint Plan of Distribution of the Crusader Funds adopted by Highland Crusader Offshore Partners, L.P., the Onshore Crusader Fund, Highland Crusader Fund, Ltd. and the Offshore Crusader Fund, and the Scheme of Arrangement between the Offshore Crusader Fund and its Scheme Creditors, as applicable) and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Participating Crusader Shares (such holder's share of such amounts, collectively, the "Participation Proceeds"). Pending such payment of Participation Proceeds by HCMLP to the holder of the Participation Interests, HCMLP will hold the Participation Proceeds in trust for the benefit of such holder and will not commingle such amounts with other property of HCMLP. Subject to any applicable tax withholding, HCMLP shall promptly pay to the holder of the Tracking Interest an amount equal to each amount received and applied by HCMLP in payment of distributions, Plan Claims and proceeds of any sale, assignment or other disposition of any interest, in each case, with respect to or in the Tracking Crusader Shares. Notwithstanding anything herein to the contrary, except for the right to receive amounts specified in this paragraph and the right to direct the voting and exercise of the AA Options pursuant to the immediately following paragraph, no holder shall have, by reason of the Participation Interests or the Tracking Interest, any rights with respect to the AA Options, the Participating Crusader Shares or the Tracking Crusader Shares.

Exercise of the AA Options. HCMLP shall exercise or refrain from exercising any rights with respect to the AA Options (including voting rights) as is directed by the holder of the AA Participation Interest with reasonable advance notice. In the event that the holder of the AA Participation Interest directs the exercise of the AA Options, such holder shall pay to HCMLP in immediately available funds, without set-off, counterclaim or deduction of any kind, the exercise price (unless such AA Options are being exercised via cashless exercise) plus all third party commissions and fees incurred by HCMLP in connection with the exercise of the AA Options on or prior to 11:00 AM Dallas, Texas time on the exercise date.

Nonrecourse Participation Interests and Tracking Interest. The Participation Interests and the Tracking Interest are held by the holder thereof without recourse to HCMLP (except in respect of the HCMLP's express obligations as set forth herein) and for such holder's own account and risk. HCMLP makes no representation or warranty as to, and shall have no responsibility for the value, legality,

genuineness, validity, sufficiency or enforceability of the Participating Interests, the Tracking Interest or any of the rights attaching to them; any representation or warranty made by, or the accuracy, completeness, correctness or sufficiency of any information (or the validity, completeness or adequate disclosure of assumptions underlying any estimates, forecasts or projections contained in such information) provided (directly or indirectly through HCMLP) by any person; the performance or observance by any person (at any time, whether prior to or after the date hereof) of the financial condition of AA, the Onshore Crusader Fund or the Offshore Crusader Fund; or (except as otherwise expressly provided herein) any other matter relating to any person, the Participating Interests or the Tracking Interest.

Standard of Care. Notwithstanding anything contained herein to the contrary, but subject to the holder of the AA Participation Interest's right and responsibility to direct the exercise and voting of the AA Options as set forth herein, HCMLP shall administer the Participation Interests and the Tracking Interest and enforce its rights, with respect to the AA Options, the Participating Crusader Shares and the Tracking Crusader Shares in the same manner as if it had not granted the Participation Interests or the Tracking Interest but owned the AA Options, the Participating Crusader Shares the Tracking Crusader Shares solely for its own account with no obligation to make or receive payments in respect of the Participation Interests or the Tracking Interest.

Assignment. Each holder of the Participation Interests or the Tracking Interest is expressly permitted to assign or transfer any or all of its rights with respect thereto without the consent of HCMLP.

EXHIBIT 62

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Debtor.	§	

APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COME NOW Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NexPoint," and with HCMFA, the "Advisors"), creditors and parties in interest in the above-captioned bankruptcy case (the "Bankruptcy Case"), and file this their *Application for Allowance of Administrative Expense Claim* (the "Application"), respectfully stating as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

A. SHARED SERVICES AGREEMENTS

3. On or about February 8, 2013, HCMFA entered into that certain *Second Amended and Restated Shared Services Agreement* (each such agreement, a "SSA") with Highland Capital Management, L.P. (the "Debtor"). On or about the same date, NexPoint also entered into a SSA with the Debtor.

4. Under the SSAs, the Debtor agreed to provide the Advisors with certain services, including "all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services …."

5. The SSAs contain the following detailed cost allocation provisions:

> The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "Allocation Percentage" means:
>
> (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
>
> (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
>
> (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

6. "'Actual Cost' means, with respect to any period [under the SSA], one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period."

7. In the event a party wishes to make changes to the shared services under the SSA, "The parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Services to [the Advisors]."

B. PAYROLL REIMBURSEMENT AGREEMENTS

8. On or about May 1, 2018, HCMFA entered into that certain *Payroll Reimbursement Agreement* (each such agreement a "PRA") with the Debtor. On or about the same date, NexPoint also entered into a PRA with the Debtor.

9. Under the PRAs, the Debtor is entitled to seek reimbursement from the Advisors "for the cost of certain employees who are dual employees of [the Debtor and the Advisors] and who provide advice to registered investment companies advised by [the Advisors] under the direction and supervision of [the Debtor] …."

10. The amount of such reimbursement is based on an actual cost allocation formula as follows: "The Actual Cost of any Dual Employee relating to the investment advisory services provided to a Fund shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "Allocation Percentage" means the Parties' good faith determination of the percentage of each Dual Employee's aggregate hours worked during a quarter that were spent on" certain matters set forth in the PRA.

11. "'Actual Cost' means, with respect to any period [under the PRA], the actual costs and expenses caused by, incurred or otherwise arising from or relating to each Dual Employee, in each case during such period. Absent any changes to employee reimbursement, as set forth in Section 2.02, such costs and expenses are equal to $252,000 per month."

12. Section 2.02 provides the mechanism to modify employee reimbursement and also provides, "The Parties will negotiate in good faith the terms of such modification."

C. BANKRUPTCY FILING AND SUBSEQUENT EVENTS

13. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*) in the United States Bankruptcy Court for the District of Delaware, thereby initiating the Bankruptcy Case. On or about December 4, 2019, the Bankruptcy Case was transferred to this Court.

14. On January 9, 2020, the Bankruptcy Court entered its *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (Dkt. No. 339, the "Settlement Order").

15. In connection with the Settlement Order, an independent board (the "Board") was appointed to manage the Debtor's general partner, Strand Advisors, Inc. ("Strand"). Its members are John S. Dubel, James P. Seery, Jr., and Russel F. Nelms. Several months later, the Board, with court approval, appointed Mr. Seery as the Debtor's CEO and CRO.

16. As the Bankruptcy Case progressed, the Court expressed concerns about the Debtor's employees providing certain services to the non-debtor Advisors. As a result, beginning around July 2020, Mr. Seery directed the Debtor to cease providing services to the Advisors as otherwise contemplated under the SSAs and the PRAs.

17. Nevertheless, the Advisors continued to pay for those services under the SSAs and the PRAs consistent with historical practice, despite the fact that the Debtor is not providing all the required services in return. For example, upon information and belief, the Debtor has booked net income from the SSAs of approximately $10 million since the Petition Date. Given that the SSAs represent actual-cost sharing agreements, said net revenue represents Advisor overpayments under the SSAs—the purpose of the SSAs is not to make a profit. At the same time, the Advisors

have incurred significant additional expense obtaining services elsewhere that the Debtor was required to provide under the SSAs.

18. There have also been similar overpayments under the PRAs. There is a schedule attached to the PRAs of investment professionals whose compensation would be reimbursed by the Advisors. But this schedule is incredibly outdated. It includes many individuals, for example, who departed the Debtor before the Petition Date or during the Bankruptcy Case. As a result, the Advisors estimate that, since the Petition Date, they have overpaid under the PRA's more than $9 million.

19. The Advisors have brought these issues to Mr. Seery's attention, and in accordance with the Debtor's obligations under the SSAs and the PRAs, the Advisors expect Mr. Seery to negotiate in good faith. Discovery will be necessary to determine the precise amount of the overpayments under the SSAs and PRAs.

III. ARGUMENTS AND AUTHORITIES

20. Administrative expenses generally include "the actual, necessary costs and expenses of preserving the estate ...." 11 U.S.C. § 503(b)(1)(a). However, the list of administrative expense claims set forth in section 503(b) is not exclusive or exhaustive. *In re Imperial Bev. Group, LLC*, 457 B.R. 490, 500 (Bankr. N.D. Tex. 2011) (citing various cases for the proposition that "the administrative expenses listed in the subsections of § 503(b)—preceded by 'including'—are not exclusive"); 11 U.S.C. § 102(3) ("In this title ... 'includes' and 'including' are not limiting ....").

21. Post-petition, pre-rejection performance under an executory contract gives rise to an administrative expense claim. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (superseded by statute on other grounds) ("If the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the

contract, the debtor-in-possession is obligated to pay for the reasonable value of those services ...."); *In re MCS/Tex. Direct, Inc.*, 02-40229-DML-11, 2004 Bankr. LEXIS 379, *11-12 (Bankr. N.D. Tex. March 30, 2004) ("Even if the contract is rejected, the contract party is entitled to payment for postpetition value received by a debtor.").

22. Similarly, a post-petition, pre-rejection breach of contract gives rise to an administrative expense claim. *See In re United Trucking Serv.*, 851 F.2d 159, 162 (6th Cir. 1988) ("the damages under the breached lease covenant, to the extent that they occurred post-petition, provided benefits to the bankrupt estate and were property accorded priority under § 503"); *Shapiro v. Meridian Auto. Sys. (Del.) (In re Lorro, Inc.)*, 391 B.R. 760, 766 (Bankr. E.D. Mich. 2008) ("the term 'administrative expense' has been construed to include claims based on tort, trademark infringement, patent infringement, and breach of contract") (citing, *inter alia*, *Reading Co. v. Brown*, 391 U.S. 471 (1968)).

23. Here, under the SSAs and the RPAs, the Advisors have paid for services they did not receive and for salaries of employees who no longer exist. The Debtor, on the other hand, collected the Advisors' payments without providing anything in exchange or incurring any actual costs. While the Advisors continued to perform under the SSAs and the RPAs, the Debtor breached its obligations under those same agreements. Accordingly, the Advisors are entitled to an administrative expense claim for the total overpayments, which, upon information and belief, total approximately $14 million. Because the accounting information related to such costs and expenses are within the exclusive control of the Debtor, discovery will be necessary to determine the precise amount of the overpayments under the SSAs and PRAs.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Funds and Advisors respectfully request that the Court enter an order granting this Application, awarding them an administrative expense

claim in an amount to be determined at trial (which is expected to be approximately $14 million), and providing them such other and further relief to which they show themselves to be entitled, at law or in equity.

RESPECTFULLY SUBMITTED this 24th day of January, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

/s/ Davor Rukavina

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Counsel for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document was served (A) electronically by the Court's CM/ECF system on all parties entitled to such notice on January 24, 2021; and (B) by first class U.S. mail, postage prepaid, on the attached service list on January 25, 2021.

/s/ Davor Rukavina
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EXHIBIT 63

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

IN RE:	.	Case No. 19-34054-11(SGJ)
	.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	.	Earle Cabell Federal Building 1100 Commerce Street Dallas, Texas 75242
Debtor.	.	
. . . . .	.	
	.	Adv. No. 21-AP-3010(SGJ)
HIGHLAND CAPITAL MANAGEMENT, L.P.,	.	
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
HIGHLAND CAPITAL, MANAGEMENT, FUND ADVISORS, L.P., et al.,	.	
	.	
Defendant.	.	Wednesday, April 13, 2022
. . . . .	.	1:09 p.m.

TRANSCRIPT OF TRIAL
PM SESSION
BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Plaintiff Highland Capital Management L.P.:	Pachulski Stang Ziehl & Jones LLP BY: JOHN MORRIS, ESQ. 780 3rd Avenue, 34th Floor New York, NY 10017
For Defendant Highland Capital Management Fund Advisors, L.P.:	Munsch, Hardt, Kopf & Harr By: DAVOR RUKAVINA, ESQ. 500 N. Akard Street, Ste 3800 Dallas, TX 75201
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INDEX

(Proceedings resumed after the lunch recess at 1:09 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

All right. We're back on the record in the Highland trial. Mr. Morris, Mr. Rukavina, what do you have?

MR. MORRIS: Just before we proceed with the next witness, I think Mr. Rukavina just wants to present the exhibit that he used on --

MR. RUKAVINA: Yes, Your Honor.

THE COURT: Okay.

MR. MORRIS: -- with Mr. Seery.

MR. RUKAVINA: As I promised, we do have paper copies couriered. I've marked it as EE.

THE COURT: Okay.

MR. RUKAVINA: If I may approach and move for the admission of EE as an impeachment exhibit.

THE COURT: Okay. And there's no objection?

MR. MORRIS: No objection.

THE COURT: Okay. You may approach.

Thank you. EE will be admitted.

(Defendant's Exhibit EE admitted into evidence)

MR. MORRIS: I do want to note that -- maybe I spoke too fast. I object to the extent it's being offered for the truth of the matter asserted. Mr. Rukavina specifically said it was for impeachment, and I have no objection to its use for

that purpose.

THE COURT: Okay. So impeachment in an attempt to impeach Mr. Seery saying he had never heard anything --

MR. MORRIS: Correct.

THE COURT: -- until January 2021 --

MR. MORRIS: Correct.

THE COURT: -- about the alleged overpayments. Okay.

MR. RUKAVINA: Yeah. That's all it's offered for, Your Honor.

THE COURT: It's admitted for that purpose.

MR. RUKAVINA: That's fine by me. That's all I'm offering it for.

THE COURT: Okay.

MR. MORRIS: Okay. So Highland's next witness is Mr. James Dondero.

THE COURT: All right. Mr. Dondero, if you could approach the witness box, I will swear you in.

Please raise your right hand.

JAMES DONDERO, PLAINTIFF'S WITNESS, SWORN

THE COURT: All right. Please be seated.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A Good afternoon.

Q Let me know when you're comfortable.

A Good afternoon.
Q Are you okay there?
A Yes.
Q Okay. So there's three binders in front of you. From time to time, I may ask you to look at a particular document. There's water there if you need it. I don't expect my examination of you to be very long. We'll see what happens.
But are you ready to proceed?
A Yes.
Q Okay. Frank Waterhouse is the treasurer of the Advisors. Correct?
A I -- I don't know his title specifically. I think he's the CFLA. I don't know.
Q He's an officer of the Advisors. Correct?
A Yes.
Q And when I use the phrase Advisors, you understand I mean NexPoint Advisors LP and Highland Capital Management Fund Advisors L.P. Is that fair?
A I don't know specifically.
I believe HFAM. I don't know about NexPoint. I think NexPoint has its own CFO now. I don't know if he's treasurer. I -- I don't know these things. I know these things -- I know these things on a current basis, but I want to be refreshed.
Q You don't -- do you know if Mr. -- let's take it one at a time. Do you know if Mr. Waterhouse serves as an officer of

NexPoint Advisors, LP today?

A I don't know for sure.

I believe so, but I -- I don't know. But Nexpoint has its own -- excuse me -- it's own CFO and it has its own C-Suite in the various (indiscernible) separate from Frank. But I don't know the corporate ownership of NexPoint.

Q Okay.

A I don't believe so.

Q I'm not asking you about ownership. I don't mean to interrupt. I'm not asking about ownership. I'm just asking specifically whether Mr. Waterhouse has a role or a title at NexPoint today?

A I -- I don't know.

Q Okay. Do you know if Mr. Waterhouse has a role or a title today at HCMFA?

A I -- I don't know post the restructuring with Skyview, et cetera. I -- I don't know. I believe so, but I don't know.

Q Okay. Let's focus on the period January 1st, 2018 until the end of 2020, that three-year period, okay. So 2018, 2019, and 2020. I'm going to refer to that as the relevant period. Are you with me?

A Yes.

Q Do you recall if Mr. Waterhouse had a role or a title at NexPoint during the relevant period?

A I -- I believe he was an officer of all the major entities

during that period.
Q And when you use the phrase "all the major entities," what are you referring to when you use that phrase?
A Highland, Strand, NexPoint, HFAM. I believe he was an officer of all the -- all the major operating entities.
Q And do you recall that he served as either the treasurer or the CFO of the Advisors at all times during the relevant period?
A I believe so.
Q And do you have an understanding of what Mr. Waterhouse's duties and responsibilities were as the treasurer or the CFO of the Advisors during the relevant period?
A Yes.
Q Can you describe for the Court your understanding of what Mr. Waterhouse's duties and responsibilities were in that capacity at that time?
A To be the chief financial accounting officer above corporate accountants, above the tax accountants, above anything accounting and regulatory-wise other than compliance reporting. Other -- other than compliance didn't report to him.
Q And did you understand that as an officer that Mr. Waterhouse was a fiduciary of the Advisors during the relevant period?
A I -- I don't want to broadly answer that question

generally, but it varies depends on -- depending on the level of fiduciary responsibility, depends on whether it's a public entity or a listed fund or a -- or a private entity.

Q Okay. I appreciate that distinction, and I just want you to focus on the two advisors, NexPoint Fund Advisors, L.P., and NexPoint -- Highland Capital Management Fund Advisors.

Is it your understanding as the person in control of those entities that Mr. Waterhouse owed those entities a fiduciary duty during the relevant period?

A Yes.

Q Okay. And was one of his duties as the treasurer or the chief financial officer of the Advisors, was that to make sure that the Advisors only paid the amounts that they owed under the contracts that they had?

A I would describe it more generally as to administer contracts according to the contracts, the spirits of the contracts and best industry practices.

Q Okay. And to the best of your knowledge, did Mr. Waterhouse fulfill the responsibility of administering contracts in accordance with their terms during the relevant period?

A I -- I don't know and I can't make a blanket statement.

Q Do you have any knowledge about any failure on Mr. Waterhouse's part to fulfill his responsibility of administering contracts in accordance with their terms during

the relevant period?
A When does the relevant period end again?
Q December 31st, 2020.
A I think there are a lot of issues in the last year or in that 2020 year.
I think his employment was -- or his responsibilities or who reported to him changed materially in that year. And what other people performed or responsibilities or DSI had, I don't know. I -- yeah, I don't know how long he had responsibility or control.
Q Is it your understanding that DSI had any responsibility whatsoever for anything having to do with either of the Advisors after the petition date?
A I'm just saying as Frank got neutered and compartmentalized and we moved from various different roles, somebody else filled them, and I don't know who. But I -- I can't say that Frank was responsible if he wasn't in his same position of responsibility and authority.
Q Did Frank Waterhouse fail to administer the contracts that the Advisors entered into with Highland after the petition date?
A I -- I think there was a failure by Highland to administer the contracts. Whether it was Frank's responsibility or somebody else's, I don't know.
Q Who on behalf of the Advisors was charged with the

responsibility of making sure that the contracts that the Advisors were party to were properly administered after the petition date? Who is the person?

A There -- there's almost nobody at the Advisors, period.

The Advisors were paid a fee for Highland to administer the contracts. Highland had all the accountants, compliance, and lawyers. The Advisors had either no employees or they had a portfolio manager or trader or somebody who is front office focused on the investor funds. So there wouldn't have been anybody to make sure or double check or be persistent if Highland wasn't doing it.

Q So did Frank Waterhouse have the duty and the obligation to administer contracts in accordance with their terms on behalf of the Advisors or did he not?

A It depends on the time frame. Pre -- pre-bankruptcy, sure. And any of his group were doing it for everybody, and they were doing it well. But by the time 2020 came along, his authority and responsibilities changed materially along the way.

Q Who changed his authority?

A Seery.

Q Jim Seery changed Frank Waterhouse's authority with respect to the Advisors?

A With respect to everything in his role at Highland, which is -- his role at Highland was administering -- one of his

roles at Highland or his group's roles were administering the contracts with NexPoint and HFAM.

Q And it's your testimony that Jim Seery told Frank Waterhouse that he couldn't do the exact same thing with respect to the administration of these contracts after he got appointed than he was before he got appointed?

A I'm saying by middle of '20 when Seery kind of started betraying the estate and moving for his own self-interest, he started making material changes to the employee and responsibility base of the Highland employees, and one of those people were Frank Waterhouse. And Frank Waterhouse's authority and functions changed materially.

And I don't know -- I -- I wasn't privy to a lot of that, and some of it was negotiating part of a settlement or a lease with him and some other stuff. But his -- his responsibilities and his role changed materially. I'm not sure how it changed. I wasn't privy to it, but I can't broad-brush Frank as being responsible or liable for the fact that the Advisors were overbilled by Highland.

Q Did Frank Waterhouse tell you at any time that he was no longer able to continue to perform the function of administering the Advisors' contracts in accordance with their terms? Did he tell you that?

A Not specifically.

Q Did anybody in the world ever tell you you're not going to

believe what Seery did, Seery told Frank cut it out, you're not allowed to administer the contracts on behalf of the Advisors anymore? Anybody say that?

A No.

But no one said he still could in his reduced, diminished, changed role, either. I wasn't -- I wasn't aware. But I assumed Highland was still performing the functions that it was getting paid for.

Q Can you tell Judge Jernigan your understanding of exactly what Frank Waterhouse was allowed and not allowed to do with respect to the administration of the Advisors' contracts? What was he not allowed to do?

A I wasn't privy to those reductions of his responsibility. I was really handed to a portfolio management position that was not managerial, and Seery was cutting side deals and bribing people and doing all kinds of crap.

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

THE COURT: You move to strike the words "bribe?"

MR. MORRIS: Yes. Yes. The entirety of the last portion because the question was about Frank Waterhouse.

THE COURT: Okay. Sustained.

BY MR. MORRIS:

Q This would go a lot smoother if you'd just stick to the issues.

What is the basis for your testimony that Frank Waterhouse

was not permitted to administer the contracts on behalf of the Advisors in the exact same way after the Independent Board was appointed as he did before the Independent Board was appointed? What's the basis for that?

A His role was changed.

His responsibility -- responsibilities and people who reported to him diminished and changed at least a couple of times starting in the summer of '20. I can't represent that he was told not to administer contracts, but I also can't represent that he was still administering contracts and didn't do them. I'm just saying it's not logical -- it's not logical for me to be able to represent any of that.

Q Okay. When did you learn this?

A I don't want to say contemporaneously, you know, because there was always -- again, I wasn't privy to it. I wasn't supposed to be part of management. I would hear it with a delay either at water-cooler conversations or from lawyers. But I don't even -- I don't remember who.

Q So you don't remember who told you this and you don't remember when you learned it. Is that fair?

A I'm saying a lot of the times it happened in second half of '20.

Q So you learned about it in the second half. What did you do when you heard this? Did you try to make sure that there was somebody who was going to look out to make sure that the

contracts for the Advisors were properly administered when you learned that Frank couldn't do it? What did you do?

A In the early, early summer of '20, nothing because I assumed that with the monies we were paying from TSI and with the staff -- accounting staff that was still at Highland, that they would be administering and providing the services that we were paying for. I didn't do anything until I found out we had overpaid by $14 million and that the overpayments were continue -- or they were continuing. That's the only time I did something which was a couple -- three or four months later.

Q Do you know how that $14 million was calculated?

A It was -- part of the contracts with Highland were for people, and I think people plus a five or ten percent processing surcharge. And a lot of the people have left or the percentage of time that they were spending on our stuff changed such that we had been billed as if people were still there and as if people were still working on our accounts when they weren't.

Q So you controlled the Advisors. Correct?

A Yes.

Q And you learned sometime early in the summer of 2020 that Frank Waterhouse was no longer going to be able to perform his function of administering the contracts on behalf of the Advisors. You learned that in the early part of the -- in the summer?

A No. That's not what I've said.
Q So when did you -- I thought you said early summer. When did you learn it?
A I said his roles were diminished, but I didn't know what his roles were diminished to, nor did I make the assumption that in his diminished roles, no one would pick up the contract administration if he wasn't.
Q Did you --
A But he might still have been.
Q Did you ask Frank how did your role change?
A No.
Q Did you ask anybody in the world how did Frank's role change?
A I wasn't supposed to be part of management. I wasn't supposed to talk to anybody. Do you remember all the stupid shit you put through?
MR. MORRIS: I move to strike, Your Honor.
THE COURT: I will strike, and I'll ask you, Mr. Dondero, to refrain from the profanity.
THE WITNESS: Excuse me. I apologize for that.
THE COURT: Okay.
BY MR. MORRIS:
Q You and I didn't have a court experience together until December of 2020. Right?
MR. RUKAVINA: Your Honor, this really now is just a

point of badgering and repetitiveness. He has his answer and now he's just haragging [sic] this witness just to intimidate him on an irrelevant topic.

MR. MORRIS: I wish I had the ability to intimidate Mr. Dondero, but the fact of the matter is I don't have an answer yet as to who was responsible for administering the contracts in accordance with their terms on behalf of the Advisors after the Independent Board was appointed.

MR. RUKAVINA: He does.

MR. MORRIS: And that's what I'm trying to get to.

MR. RUKAVINA: He has his answer. Mr. Dondero testified that it was Highland's responsibility. Mr. Waterhouse was here yesterday. He could have asked Mr. Waterhouse these questions.

MR. MORRIS: And --

MR. RUKAVINA: He didn't.

THE COURT: All right. I'll overrule and give you a little bit more latitude.

MR. MORRIS: Thank you.

THE COURT: But I think he's --

BY MR. MORRIS:

Q Did you make sure that there was a fiduciary for the Advisors who was looking out for the Advisors' interest after the time that you learned that Mr. Waterhouse's wings had been clipped?

A Not until 2021. Not until later.
Q Did you do anything to make sure that Highland was actually doing what you now claim you expected? Did you do anything to satisfy yourself that Highland was going to administer the Advisors' contracts in accordance with their terms or did you just assume that that was going to happen?
A I assumed Highland would honor the contracts we were paying for --
Q But --
A -- and they were paying for.
Q But you didn't do anything other than make that assumption. Right? You didn't have your lawyers write a letter, you didn't pick up the phone and call anybody. You were still in open communication with Mr. Seery at this time, right, in the summer of 2020?
A It ended in the summer of 2020.
Q There was no prohibition for you to pick up the phone and call Mr. Seery and say, hey, what's happening with Waterhouse, are you guys going to just make sure you're doing this right?
A I don't know when the prohibition of talking to him started. I don't remember.
Q But you're not relying on that prohibition to excuse your failure to call Mr. Seery to complain about this change. Right?
MR. RUKAVINA: Your Honor, it's been almost 30

minutes on the same topic which he has answered repeatedly. That Mr. Morris might not agree with that answer, doesn't matter. And this is a matter for closing arguments, not to take this witness for a two-hour road as to what Mr. Waterhouse's clipped wings meant when he said he doesn't know.

THE COURT: Well, it hasn't been 30 minutes, technically, but what is your response?

MR. MORRIS: I think this is an incredibly important topic because our position, among many others, is that Mr. Waterhouse did exactly the same thing after the petition date as he did before the petition date. In fact, he testified to it yesterday. Mr. Waterhouse testified very clearly that a new process was put in place after the petition date where, generally, he would have to approve all of the payments that were made on behalf of the Advisors under these contracts.

And now I have a witness here who is completely contradicting the witness himself, Mr. Waterhouse. And I don't understand -- I don't understand the basis for this testimony. We haven't heard anything about who told him, when he learned of this, what he did in response. I just -- I'll move on.

MR. RUKAVINA: But the point is --

MR. MORRIS: I'll move on, Mr. Rukavina, okay?

MR. RUKAVINA: The point is, Your Honor, that Mr. Waterhouse is the best evidence of what Mr. Waterhouse did. And Mr. Morris opened a door to this just for the purpose of

trying to badger my witness.

MR. MORRIS: That's not fair. Mr. Dondero controls these entities.

THE COURT: Okay.

MR. MORRIS: He should know that there is somebody looking out for the interests of these entities. He should know that.

THE COURT: Okay. I overrule the objection.

MR. MORRIS: But I will move on.

THE COURT: Okay.

BY MR. MORRIS:

Q Mr. Dondero, in 2020, entities directly or indirectly owned by you and Mr. Ellington made payments to Mr. Ellington, Mr. Waterhouse, Mr. Surgent, and Mr. Leventon. Correct?

A Yes.

Q And did you decide to have those payments made to those individuals in 2020?

A Yes.

Q How much was paid to them in the aggregate?

A An amount equal to exactly what they would have been entitled to if they had been rooked by Highland.

Q Do you understand that Highland made a motion to try to have those bonuses paid to those individuals?

A Highland could have paid it at any time.

Q Didn't it need the Court's permission to do that? Are you

aware of that?
A Not -- not in my opinion. Not for prior-year bonuses and not for prior -- and not for earned bonuses and -- and not for amounts that Seery told everybody he was going to pay them.
Q So you don't have a recollection of Highland under Mr. Seery's direction making a motion to this Court to have those very bonuses paid? You don't remember that?
A No.
Q Do you remember that every single person in the Highland complex had their bonus paid except for those four individuals?
A No. That's not true.
Q Okay. So you paid them. And how much were the bonuses that Mr. Seery stiffed them off?
A It's all in -- it's all in the Highland servers, the exact amounts. I believe it was close to ten million bucks.
Q Okay.
A You -- you guys have all this information.
Q Okay. But your recollection is that you caused entities owned and controlled by you and Mr. Ellington to pay something around $10 million to Mr. Waterhouse and Highland's most senior legal and compliance officers. Correct?
A What was the first part of the question, please? I didn't --
Q You caused entities owned and controlled by -- directly or indirectly by you and Mr. Ellington to pay somewhere

approximately $10 million in 2020 to Mr. Waterhouse and Highland's senior legal and compliance officers -- Mr. Ellington, Mr. Leventon, and Mr. Surgent. Is that right?

A Yes.

So I just want to emphasize it wasn't a targeted amount. It was an amount meant to be exactly what they would have been paid if Highland had not been in bankruptcy and just paid normal bonuses in the normal course.

Q So --

A It's exactly that amount.

Q So -- and you didn't disclose that to the Court, did you? Those payments?

MR. RUKAVINA: Your Honor, I object to the implication that Mr. Dondero had any requirement to disclose anything to this Court. It would have been those individuals' obligations. So that is an unfair question. Why would Mr. Dondero have to disclose to this Court that he's paying bonuses?

MR. MORRIS: If Your Honor thinks it's an irrelevant question --

MR. RUKAVINA: I didn't say it's about relevant. I said that the question was improperly phrased as assuming that he had any legal obligation to inform the Court.

MR. MORRIS: I --

THE COURT: Overruled.

BY MR. MORRIS:

Q Mr. Dondero, did you or anybody on your behalf ever inform the Court that entities owned, directly or indirectly, by you and Mr. Ellington were going to pay approximately $10 million to Mr. Waterhouse, Mr. Leventon, Mr. Ellington, and Mr. Surgent?

A I know we were counseled. I know counsel told us we had no obligation.

Q Okay. Did you tell Mr. Seery?

A Seery knew. But I didn't tell him.

Q Okay. That's my question. My only --

MR. MORRIS: -- and I move to strike, Your Honor. He ought to answer my question.

BY MR. MORRIS:

Q Did you tell Mr. Seery? That's the only question there is.

A No.

THE COURT: Okay. Strike what you asked.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Do you know if anybody told Mr. Seery about these payments at the time they were made?

A I know -- I know he knew from either Frank or from Thomas Surgent. But I don't know from which party.

Q Did Thomas Surgent tell you that he had informed Mr. Seery

of these payments?
A No.
Q Did Frank Waterhouse ever tell you that he had informed Mr. Seery of these payments?
A I -- I can't recall specifically.
And I -- I want to use that as the same answer on Thomas Surgent. I can't recall specifically. But I know -- I know one of the -- one of the two of them contemporaneously discussed it with Seery.
Q How did you learn that?
A From one or the other. I just can't specifically remember --
Q Did they --
A -- a conversation.
Q Did they report to you what Mr. Seery said?
A No.
Q Each of these individuals subsequently filed a proof of claim in the bankruptcy court for their bonus. Isn't that correct?
A Yes.
Q And those claims were subsequently assigned to entities owned, directly or indirectly, by you or Mr. Ellington. Correct?
A Yes.
Q Sir, you personally knew how much the Advisors were going

to pay Highland under the Payroll Reimbursement Agreement and the Shared Services Agreement. Correct?

A No.

Q Did you ever ask?

A No.

Q You determined in late 2017 that NexPoint would pay Highland $6 million per year for subadvisory and shared services effective January 1st, 2018. Correct?

A I -- I don't know the specific agreements from each year.

There was an agreement each year. The agreements changed from being a flat fee to a back-service -- back-office fee plus a reimbursement of employees fee sometime more recently. But I -- I don't know the exact dates on -- of specific contract.

Q Do you recall in late 2017 speaking with Mr. Klos and Mr. Waterhouse about having to get more money from the Advisors to Highland because Highland was losing a lot of money?

A No.

Q Do you recall discussing with them that Highland should receive $6 million from NexPoint for services rendered?

A The -- no. All the efforts were to be fair and accurate and compliant from a regulatory and tax standpoint. All the centralized cost allocation things.

Q Was your personal tax liability ever a factor in determining how much money would be paid from the Advisors to Highland?

A No.
Q Do you recall that there was a substantial change in the method and amount of money that was paid from the Advisors to Highland on account for services rendered at the beginning of 2018?
A I recall there was an old agreement from '13, which was neither best practices nor compliant from a regulatory or tax standpoint, that had to be improved and made more specific. And a team from accounting, legal, and compliance re-crafted the Shared Services Agreement and front-office allocation appropriately in that 2017-'18 time period.
Q Are you aware that Frank Waterhouse signed the Payroll Reimbursement Agreements, the Sub-Advisory Agreements, and the New NexPoint Shared Services Agreement in 2018, in the first half of 2018?
A I'm not specifically aware. It doesn't surprise me.
Q Did you ever review any of those agreements?
A No. Yeah, no.
Q Okay. You didn't participate in the drafting of those documents. Correct?
A No.
It was a typical shared services of a complicated financial services firm that centralizes functions. It was a -- it was a typical agreement that would be put together and administered by accounting.

Q But people like Frank Waterhouse actually wore multiple hats. Correct?
A Sure.
Q And he wore the hats of the Advisors and he wore the hats of Highland at the exact same time. Right?
A Sure. It's possible to be fair doing that.
Q And you're the one who decided that he should wear these multiple hats. Right? You're the one who appointed him to these positions?
A Yes.
Q Okay. Do you recall that you participated in annual review meetings with Mr. Waterhouse and Mr. Klos and Mr. Okada?
A Yes.
It would be multiple, generally. Sometimes there were tax ones, sometimes there were budgeting, sometimes it was performance reviews. Yeah. Yes.
Q You know, I just want to go back to that issue of taxes for just a moment. Do you recall that in 2017 and 2018, the Advisors earned millions of dollars of income?
A Not specifically, but --
Q Do you recall that they earned positive income in those years?
A I believe so.
Q And do you recall that Highland had negative income in those years?

A I don't know.

Highland's a giant solvent pool of assets. So the liquidity, it varies from year to year. But -- and, also, the mark-to-marketing of those assets varied from year to year. So whether or not Highland made money in a given year, I don't know. There's some years it makes a lot but has limited cash flow; other years, it has material cash flow and makes a lot. Some years it has material cash flow and loses a lot.

Q All right. Let me just focus on operating profits. On an operating basis, Highland lost a lot of money in 2017 and 2018. Correct?

A I don't know.

Q Okay. Can you grab your book there, please?

A Sure.

Q And turn to Exhibit 86. I think it's in Volume 2 of 2.

Mr. Dondero, if there's any portion of the book that you in particular want to read, just let me know. But I'd ask you to just turn to Page 2.

A Page -- I'm on Page 2.

Q Okay. And do you see near the top, it says, quote, overall operating income projected at $900,000, but there's a $12 million loss for HCMLP which doesn't account for some other items? Do you see that?

A Yes.

Q Does that refresh your recollection that Highland was

projected to lose $12 million in 2018?
A Well, it actually refreshes my recollection on what I said.
And there's substantial underlies in expected investment and investment commitments. There's a balance sheet that's moving around that dwarfs the $12 million, which is what my point was.
Q I'm not talking about assets, sir. I'm talking about operating income, the ability to pay your bills.
A Right.
What I'm talking about is if you have 650 million of assets, which we still have today, you have more than enough solvency to cover 12.
Q So this wasn't a problem from your perspective?
A Correct.
Q Okay.
A It never had been.
Q Okay. Let's go to Slide 29, please.
A In the same book?
Q Yeah.
THE COURT: I'm sorry, you said 29?
MR. MORRIS: 29, yeah.
BY MR. MORRIS:
Q And if you could just -- I'm just going to ask you quickly 29, 30, 31, 32, that's all information about human resources.

Correct?
A I'm sorry. Exhibit 29, the Shared Services Agreement?
Q No, no. I'm sorry. In 86, just Page 29.
A Oh, okay.
Q Yeah.
A Page 29, yes.
Q Okay. So if you look at 29, 30, 31, 32, you're given a lot of -- this deck was presented to you by Mr. Waterhouse and Mr. Klos. Right? If you look at the front?
A Okay. I don't know. I assume so.
Q Okay. So on that assumption, if you look at 29, 30, 31, whether this is the exact book or not, you would agree that you were presented with a lot of information about the Highland platform's employees. Correct?
A Yes.
Q And did you personally have to approve everybody who was hired?
A No.
Q But you were informed of everybody who was hired. Correct?
A Generally.
Q And you were generally informed about everybody who was fired. Correct?
A Generally.
Q And everybody who was terminated? If you look at 32, for

example, they tell you exactly the number of people who were terminated and they identified by name the names of the individuals who were terminated.

Do you see that? If you look at 32.

A Sure. Okay.

Q So there's no question that you were given that information. Right?

A Once a year at the end of the year. Is that what you're asking me?

Q In this deck.

A Right.

Q And you met with Brian Collins from time to time to discuss personnel matters. Right?

A Yes.

Q And you're the person who set the compensation for everybody who worked for Highland. Right?

A No. Just generally.

Q Nobody got a raise without your approval. Did they?

A Yes. I mean I get told about it afterwards or something.

Q Who had the authority to give raises without your prior approval? Who in the organization had the ability to hand out money without your approval?

A Well, if it was a large amount, they would seek my approval. But I'm saying small amounts, unit heads would have that ability.

Q Okay. So you had to approve -- let's -- can we use the word "material?"
A Yeah.
Q Okay. You had the authority and the responsibility for approving all material changes in compensation for Highland's employees. Right?
A Yes.
Q Okay. Go to Slide 36, please.
Do you remember that these annual reviews included forecasts?
A Yes.
Q And those forecasts would contain assumptions, right?
A Yes.
Q And in this particular forecast, if you look at the top, you were told to assume that the material inter-company arrangements remained unchanged and it specifically said that NexPoint and its subsidiaries would pay $6 million per year for subadvisory and shared services. Do you see that?
A Yes.
Q Where did that number, six million, come from?
A I assume it was -- I don't know.
It was -- these are the assumptions they're using. They probably flatlined prior years. There were probably prior years where five or six or based on growth, you know, of prior years five. There's maybe a mixture of six. I don't -- I

don't know the answer.
Q Did you play any role in determining how much money would be paid by the Advisors to Highland for services?
A No. It was done via the shared services contracts that are meant to be for a variety of regulatory and tax purposes appropriate and fair.
MR. MORRIS: All right. I move to strike. I'm just asking him about what he did.
THE COURT: Sustained.
BY MR. MORRIS:
Q Did you play any role in establishing the fees that were paid by the Advisors to Highland under any of the inter-company agreements?
A Not the specifics, just the general direction to be compliant in best practices.
Q Okay. But you were told here -- right? We don't really have to debate the point. You were told, you will admit, in the beginning of 2018 that the assumption was that NexPoint and their subsidiaries would be paying $6 million a year for subadvisory and shared services. Correct?
A Yes. That -- I was told here that they had to make an assumption, and they made an assumption.
Q Okay. Can you turn to Page 46, please?
Do you see that that's the NexPoint three-year profit and loss forecast?

A Yes.
Q And do you see that in the middle of the page, there's a reference to subadvisor fees and shared service expenses?
A Yes.
Q And do you see that if you add those two numbers up for any of the years, it equals $6 million?
A Yes.
Q So, again, the projections that you were given showed that NexPoint would be paying Highland exactly $6 million for these services for each of those three years. Is that right?
A That's the assumption in this forecast.

They -- they missed the bankruptcy. They missed the fact that the revenue wouldn't change, but they had to make some assumptions that, you know -- whatever. But they don't know what they don't know. But they had to make some assumptions, so they -- they put a flatline assumption in there.

Q Well, do you know that with the exception for -- with the exception of December 2020, that assumption proved 100 percent correct? That's exactly what NexPoint paid for the first 35 out of the 36 months on that forecast?
A We didn't have a lot of turnover before the bankruptcy, and it was based on head count and it was based on percentages of people. So, yeah, the assumption probably played out until people started moving in and out and until the assets under management changed. But, yeah, that makes sense.

Q This is what you were told they would pay, and this is exactly what, in fact, they did pay with the exception of December 2020. Do you know that?

A I don't know that except for you're telling me that and showing me that here.

And I'm reluctant to give any credence to a projected (indiscernible) forecast based on a lot of assumptions having to have been -- happened to have been right in a year or two somehow overrides the contracts that's very specific and very clear.

Q Well, if you take $6 million a year and you divide it by 12, that's $500,000 a month. Right? Simple math.

A Roughly, sure.

Q Not even roughly. Exactly. Right?

A Okay. It's not exactly six million, but yes. Okay.

Q Well, if you add 3,024,000 plus 2,976,000, you actually come to exactly 6,000,000. Right?

A Okay. Yeah, then it's exactly 500,000.

Q It is.

A Yes.

Q And you were told in April of 2020 that NexPoint would pay exactly $500,000 for each and every month through the end of the year. Isn't that correct?

A No. No.

And all I'm saying is there's a responsibility to

administer a contract beyond the assumptions in a -- in a pro forma. This is meant to be an overall year-end review. It's not meant to be a detailed review of all contracts. It's -- it's meant to be approximate. It's summarizes everything to six, seven line items instead of a hundred line items. It's not a -- it's for planning purposes. That's -- that's what this document is.

Q Are you aware that the corporate accounting group prepared in the ordinary course of business 13-week forecasts?

A Yes.

Q And do you understand that those 13-week forecasts included the amount of money that the Advisors were going to pay to Highland for the services?

A We have similar assumptions on a variety of things, also, yes.

Q And were those forecasts given to you?

A Sometimes we -- we went over them periodically.

Q And when you say "we would go over them," you went over the 13-week forecasts with Mr. Waterhouse and Mr. Klos. Correct?

A Generally.

Q And you continued to get forecasts after the bankruptcy. Correct?

A Not much. A little bit. I -- things changed with the bankruptcy.

Q All right. So before the bankruptcy, there is no question before the bankruptcy, you got the 13-week forecasts that showed exactly how much the Advisors were projected to pay under their contracts with Highland. Right?

A Yes.

Q And after the bankruptcy filing, certainly before the Independent Board was appointed, you continued to get the 13-week forecast. Right?

A There was only a few weeks in between there. I don't know if I saw anything in that few weeks.

Q And Highland filed disclosures on the docket showing how much revenue they generated and the sources of their revenue. Right?

A Scant -- scant detail. But yes, a little bit regarding revenue.

Q And even after Mr. Seery was appointed, Mr. Waterhouse and Ms. Hendrix would still give you information about NexPoint and the advisors and their projections. Right?

A I did get information on the advisors after the bankruptcy, the advisors and entities that weren't part of the bankruptcy.

Q Can you go to Exhibit 150, please, sir?

And do you see that this is an email that Ms. Hendrix sent to you in April 2020, where she attached a NexPoint cash forecast?

A Yes.
Q And do you see that she invited you to discuss the forecast if you had any questions?
A Yes.
Q And do you see the forecast is not a big document. Right? It's just a one pager?
A Yes.
Q It's a cash forecast?
A Yes.
Q And it shows that for every single month from May 2020 until December 2020, NexPoint was projected to pay Highland how much?
A (No audible response)
Q $500,000. Right?
A Yes.
Q So, here they are in April 2020 repeating exactly what they told you was going to happen, what they projected to happen, back in January of 2018. Right?
A Okay. Those are projected numbers. They're not reconciled. They're not trued up. They're part of contracts that need to be administered. The fact that they're putting in a flat line with an expectation to reconcile it later is not a surprise.

People don't reconcile things on a daily basis or minute-by-minute basis. It happens in due course when it's efficient.

I don't know if -- I don't know when they normally reconcile, if it's quarterly or monthly or yearly, but those are questions for Frank and Klos. But you would never have a specific contract that isn't reconciled when it has a lot of variables in it.

Q At this point, Frank Waterhouse's wings had not been clipped. Right? It's April.

A Correct.

Q And so he's still the person who is responsible for administering the contracts in accordance with their terms. Right?

A He's the one -- he and his group are responsible for administering the contract, due course, best practices, yes.

Q And he is telling you in April 2020 exactly what he told you in January of 2018, and that is the cost of NexPoint's contracts with Highland would be $500,000 a month. Correct?

A That was his -- for cash flow purposes, that was his assumption, yes.

Q Okay. And do you understand, do you know that for every single month from January 2018 until the end of November 2020, NexPoint paid exactly $500,000?

A I don't know exactly when he told me to stop paying, but hopefully they stopped paying when I told them to stop paying.

Q Well, you told them to stop paying after you got notice of termination of the shared services agreements. Correct?

A No. I told them to stop paying once we realized we were being over billed.
Q And that occurred after you got notice of termination of the shared services agreements. Correct?
A I don't know. I have no recollection of that.
Q All right. We'll deal with Mr. Norris on that topic.
But there's no question -- you don't have any reason to question the assertion that NexPoint paid exactly $500,000 every single month for 35 months until the end of November 2020 when you directed Mr. Waterhouse not to make any further payments, fair?
A Yeah. I've no reason to know that they didn't.
Q All right. Okay. I want to go back in time a little bit.
Are you aware that in January 2018, Frank Waterhouse signed a sub-advisory agreement on behalf of both advisors?
Do you know that?
A Not specifically. And, again, I knew there was a task force that changed and improved it to be compliant. And I assume that's what you're referring to.
Q It's not.
Can you grab Volume 1 of 2, please, and go to Exhibit 5.
Do you see that's a sub-advisory agreement?
A Yes.
Q And do you see, if you look at the end, that Mr. -- and his signatures appear on the page ending in Bates Number 580.

Do you see Mr. Waterhouse signed this sub-advisory agreement on behalf of both NexPoint and Highland?
A Yes.
Q Did you authorize him to do that?
A Not specifically.
Q No.
Do you have any knowledge that Mr. Waterhouse signed a sub-advisory agreement effective as of January 1, 2018, on behalf of both Highland and NexPoint?
A I have general awareness there was a tax legal compliance accounting task force to make this agreement as accurate and proper and best practices as possible. And this is their work product that Frank, as leading the group signed, and I'm fine with him signing it. But I was not specifically involved and I don't have direct recollection.
Q Okay. That's fair.
Can you just turn to Page 3?
A 3 of this contract?
Q Yes.
Do you see it required a monthly fee of $252,000 in Section 2(a)?
A I'm sorry. Section 2(a)?
Q Yes.
A Two dot zero one. Is that -- I'm sorry. Maybe I'm in the wrong --

Q We're in Exhibit 5. It's Exhibit 5, Page 3.
A Hang on. I'm sorry. I was in Exhibit 6.
Q Take your time.
A Exhibit 6, Page 2. Okay.
Q Yeah, we're at Exhibit 5, Page 3.
A Page 3. Okay.
Q Do you see the compensation there is $252,000 a month?
A Yeah.
Q And do you see that it's a fixed fee?
A Yes.
Q And it doesn't have anything to do with costs, does it?
A Hold on a second.
Q Take your time.
A I think what's happening here is I think there's two agreements. There's one for back-office people, or back office function, in general, which has a fixed fee to it which is probably what this is.

And then, there's one that looks like the other one we were looking at that has a list of people in the back and the percentages of their time. And that's the one that's cost plus and reimbursement.

And this -- this one I believe was more fixed based on just general services provided.

Q Okay. So would you agree that sub-advisory services are what's commonly known as front-office services? They're

investment advisory services.
A Everybody uses different names. The front-office one is generally a people-oriented one and, then, the other one is generally a more fixed overhead.
Q Are you aware that this sub-advisory agreement was replaced with the payroll reimbursement agreement five months later? Do you know that?
A Well, that's what I had said earlier, that from 2013 on, there was a general fixed structure one that wasn't best practices, wasn't compliant from a regulatory or tax standpoint, that was with a task force made to be compliant and split into two. And if it happened six months after this one was signed, I don't have specific knowledge, but I know the compliant improved, enhanced one. Was enforced in '18.
Q All right. I'm really not trying to trick you.
A Well, that's how it feels.
Q So I want to clear this up because that's exactly what I'm not trying to do. I'm trying to get your best recollection. And if you don't recall, you don't recall.
But if you look at Exhibit 3, you'll see that's the shared services agreement for NexPoint as of January 1, 2018. And that's a fixed fee contract.
Take your time and look at it. I don't mean to rush you.
A Right.
Q But if you take a look at -- right. That's the amended

and restated NexPoint agreement. It's a fixed fee agreement. If you take a look at Page 9, the consideration, its says "flat fee of $168,000 per month."

A Yes. Okay. I understand what you're doing now.

Q Okay.

A NexPoint had the front-office people working at NexPoint because we had public greets, people or officers there. There were investment professionals there. NexPoint didn't have investment professionals at Highland.

Q So you created a new sub-advisory agreement for that purpose?

A Well, what I'm saying is the sub-advisory agreement should be different for the -- or should be somewhat different, either in amounts or mechanism, between Hfam and NexPoint. And I don't know if that's --

Q No. I'm just not --

A And, again, I know you're trying to trick me, but if --

Q I'm not.

A -- you're saying there's one agreement here, and ah ha, there's two agreements with Hfam, they're different entities.

Q I'm not even talking about HCMFA.

A Okay.

Q I'm really just focused on NexPoint.

Are you aware that on January 1, 2018, NexPoint entered into two new agreements with Highland, one of which was a

shared service agreement for back and middle office services and one was a sub-advisory agreement for investment advisory services. Do you know that?

A My general understanding is they both, Hfam and NexPoint, signed two that were better and more accurate, appropriate to reconcile, proper split, not art, more science-based on, on formula, and they both did.

I was just -- I thought you were trying to go down a path and only one of them did, or one of them was different than the other.

I wasn't that involved in the process, but there were great efforts made by the people involved to make them appropriate and complaint.

Q Okay. And, in fact, HCMFA did not sign the sub-advisory agreement at the beginning of 2018. Are you aware of that?

A No.

Q One was prepared, but they didn't sign it.

Do you know that?

A No. I have no awareness of that.

Q And are you aware that the sub-advisory agreement that was signed by Mr. Waterhouse on behalf of NexPoint and the sub-advisory agreement that was prepared for HCMFA but not signed by anybody, were actually replaced by these payroll reimbursement agreements.

Do you have any recollection of any of that or any

knowledge?
A Frank would be your person.
Q Okay.
A If the timing was so close, they might've held off on one agreement because they knew it was coming. Maybe they signed one in due course because an auditor needed it.
Q I don't want you to speculate.
A You know, I mean, I have no idea, but you ask him.
Q You're the person in control, so I'm asking you. If you don't know, just say I don't know.
A I don't know. I have no idea.
Q Okay. Did you ever read the Payroll Reimbursement Agreement before it was signed?
A No.
Q Have you read it today?
A No.
Q Do you ever look at that Exhibit A that was attached to it cause you referred to it? Do you ever look at that Exhibit A?
A I saw it, but it was exactly what I expected, a list of people and percentages.
Q Are you aware that some of those people had been terminated from Highland before the agreement was even signed?
A The day I became aware of that, and we were still paying for them, is the day we stop paying.
Q Oh, that's when you first learned?

A No. I mean, I knew -- I mean, I knew people had left the company, but the day I first knew that we were still paying for people who had left the company was the day we stopped paying.

Q Ah, okay. But there's no question that you knew when the people on that Exhibit A left the company. You knew that. Right?

A Sure.

Q Sure. Okay.

Was it your understanding that when one of the individuals listed on Exhibit A was terminated that the amount of money that NexPoint would pay to Highland would be reduced?

Was that your understanding?

MR. RUKAVINA: Your Honor, I'll object on speculation. The witness said he did not read that payroll reimbursement agreement, negotiate it, so this is all based on speculation.

THE COURT: Overruled.

THE WITNESS: Absolutely. But when it was reconciled, I don't know. I wasn't, you know --

BY MR. MORRIS:

Q So it's your understanding that every time a dual employee left Highland, that NexPoint should have gotten a reduction in the amount of money it paid under the payroll reimbursement agreement. Do I have your understanding correctly?

Is that fair?

A Yeah. Absolutely. Why would you have a list of people and percentages otherwise?
Q Okay.
A You wouldn't have it.
Q Okay. And did you ever take any steps to make sure that when dual employees left, there was a reduction in the amount of money that NexPoint was paying to Highland?
A We relied on Highland for that in the fees we were paying Highland. We didn't have the staff to do it in our entities.
Q Well, in fact, I think you testified, and I'll just ask you to confirm, that until the summer of 2020, Frank Waterhouse, as the treasurer or the CFO of the advisors, who had a fiduciary duty, one of his responsibilities was to administer the contracts in accordance with their terms.

Do I have that understanding correct? He was the one, until the summer of '20, until Mr. Seery did what you contend Mr. Seery did, until that moment, he is the one on behalf of the advisors who had the responsibility of administering contracts. Right?

A Yes. Administering.

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

THE COURT: All right. Pass the witness.

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Dondero, what was your title at Highland in 2018 and

2019?
A President.
Q Okay. Were you at the top?
A Yes.
Q For the record, what was the size of Highland at that time, revenue, assets under management, employees?
A Very similar to today, really, in terms of asset size. About 650 million in assets.
Q Owned assets.
A Owned assets.
Q What about managed assets?
A Well, I can't -- I know it was bigger. The CLOs were bigger.
Q Are we talking about billions?
A Yeah. It was --
Q And approximately how many employees in 2018?
A Boy, maybe 40, 50 more than today.
Q So how many in total?
A 150 maybe.
Q Okay. And just approximate annual revenue back then?
A I don't know.
Q Well, let me ask you this.
A Yeah, sure.
Q As the president of an entity that had hundreds of millions of dollars in assets, billions of dollars under

management, and hundreds of employees, would you expect that you would know every detail about every contract or every negotiation?

A No. No, we had a good accounting staff. We had a good compliance staff. We had a good legal staff. And they did their jobs respectively to administer things appropriately, the way we were operating, which was typical of other asset management firms.

Q So I take it you would get advice from subordinates from time to time.

A Yeah, sometimes. Yeah, it --

Q Would you act on that advice?

A Yeah. And it was --

Q Would you receive instructions?

MR. MORRIS: Objection. Leading.

THE COURT: Overruled.

BY MR. RUKAVINA:

Q Would you receive instructions?

A Yes. And --

Q And who would execute those instructions?

A It would depend on the area. But, you know --

Q Would it be you?

A No, I wouldn't execute it. But, it would depend on the area. If it, you know -- we would -- we act very quickly to anything coming from compliance that was a concern. Anything

from tax would also be a priority. And then, you know, the accounting or GAAP accounting kind of caught up around the --

Q And let me interrupt you.

A -- annual audit.

Q Let me interrupt you because --

A Sure.

Q -- I really do want to move on.

And Mr. Waterhouse, he was a senior executive like yourself. Is that accurate?

A Yes.

Q Would you have expected Mr. Waterhouse to know the details of all contracts and all transactions?

A He had a staff, and he needed to have a significant staff. They were the --

Q Why did he need to have a significant staff?

A There were a lot of audits. There were a lot of public company responsibilities. There were a lot of private equity company expenses.

Q Were their contracts to manage?

A Yeah, there was lots of things. Everything from personnel to --

Q Would you have expected --

A -- contracts to tax, you know.

Q Would you have expected Mr. Waterhouse to personally manage or administer contracts?

A No. He would have mechanisms set up for it. And, again, you can't administer contracts every 15 minutes. You would have some cost benefit to when you administered them or reconciled them.

Q So how would you expect Mr. Waterhouse to learn of a potential problem with administering a contract?

A Either one of his people would alert him to it or one of the groups that were paying it would alert it to him -- alert him to it or he would notice.

Q Would you have expected him to notice for each contract being administered if there were hundreds of contracts?

A I mean, eventually.

I mean, a lot of things catch up at year-end or at the audit. But eventually, he or his team would -- or are responsible for administering contracts. It's rare it's a major gaff and it's not good for people's career if -- let's say you have a lease contract that's supposed to escalate every year and someone forgets to escalate the rents for five years.

You know, it's -- that's -- that would be a bad reflection on a lot of people because then it's a project to go back and try and get it and argue it and whatever.

Q Didn't Mr. Waterhouse, in fact, at some point in time, inform you that he had learned of the overpayments.

MR. MORRIS: Objection. Leading. I just --

THE COURT: I didn't even hear the question --

MR. RUKAVINA: I'm sorry, Your Honor.

THE COURT: -- to be honest.

BY MR. RUKAVINA:

Q Did Mr. Waterhouse, at some point in time, inform you that he had learned of the overpayments?

A Yeah. That was in --

THE COURT: Oh, overruled. He can answer.

THE WITNESS: -- November or December of '20?

BY MR. RUKAVINA:

Q And was that -- and just to confirm, was that the first time you learned of the overpayments?

A Yeah, the first time I had learned that there were overpayments that weren't reconciled or that we weren't getting credit for.

Q What do you mean by reconciled?

A Well, that there wasn't a -- either a reduction in future payments or something for overpayments in the past. There's lots of ways to --

Q Was there a -- but --

A -- satisfy a --

Q Was there a general --

A -- deficiency.

Q Was there -- and I'm sorry to keep interrupting you, sir. We just want to try to get done today.

Was there a general practice at Highland as far as

reconciling or chewing up contracts?
A Not that I'm aware of. I'm sure they had one, but not that I'm aware of.
Q Okay. Are you aware that the two payroll reimbursement agreements were amended to provide $2.5 million of additional cash from the advisors to Highland?
A In what year was that? Or that was --
Q At the end of 2018?
A Yeah. I believe there was a reconciliation of some sort there, yes.
Q That's what I'm asking you.
A Yes.
Q What do you understand, if anything, about that reconciliation?
A That they did the proper true-up in the accounting and, whether it was based on assets under management, work, or people, they made the proper adjustments.
Q Is that the only true-up to your understanding? Because I asked you about a general practice, and you said that there was not.
A I said I didn't know if there was. If they did it at year-end and you're telling me they did it year-end '18, it sounds like it was a year-end process.
Q Do you remember authorizing the advisors to pay $2.5 million in additional payroll reimbursement expenses at the end

of 2018?
A I don't remember. I don't know if I would've had to authorize it if it was part of the true-up process.
Q And you were also asked whether, in light of what you described as Mr. Waterhouse's diminished role or clipped wings -- whatever words were used -- you expected someone else to administer the contracts with the advisors. I want to follow up on that.
Do you know who Dustin Norris is?
A Yes.
Q And what's your understanding of who he is for the advisors?
A That's a good question. I don't want to -- I don't want to fumble this one.
Q Let me ask you this. Is he an officer?
A The broker-dealer, in some of the entities, yes. I don't know if all of the entities.
Q Did you ask Mr. Norris to involve himself in any way with these overpayments and these contracts?
A Well, we were trying to do an amicable split. After we found out about the overpayments, Dustin was front and center trying to have a soft landing instead of having everybody kicked out of the building and then coming back and all that nonsense.
But my recollection is in that November-December time

frame, hearing about it from Frank, and then stopping excess payments until we were trued up.

Q And also, you were asked about Frank's official titles with the advisors. To your understanding, who was actually -- who actually employees Frank? What company is his employer?

A In the time frame we're talking about?

Q No. Today, sir. When you were asked about today.

A Today, he works for a Skyview.

Q And what's Skyview?

A Skyview is an amalgamation of the accounting staff and legal staff in a separate entity.

Q Former Highland employees?

A Yes.

Q And is that why you're not technically sure as to whether he's an officer because he's an employee of Skyview?

A That's right.

Q Okay. I think you've testified that whatever his role is, he is in charge of accounting for the advisors?

A Yes.

Q Okay. Today?

A Yes.

Q Okay. And just for the record, the Court may or may not know, but when you refer to Hfam, are you referring to HCMFA?

A Uh-huh. Yes.

Q Okay. Now, I don't think there's any point in showing you

the payroll reimbursement agreements since I think you testified you never read them. But there are amounts in those agreements and those amounts total up to certain amounts per year. Are you following me so far?

A Yes.

Q Do you know how those yearly amounts were determined for the two payroll reimbursement agreements?

A Some of the fixed numbers are relevant to what's the fixed expense base and then divided based on --

Q Well, let me pause you. Let me pause you. I apologize.

I'm talking about just the payroll reimbursement now, not the shared services.

A Oh, the payroll --

Q The payroll of --

A Yeah.

Q -- the employees.

A Yeah, the payroll of the employees and they're, and I don't want to call them unallocated, but some of the employees are employees that represent various entities. And then, there's a percentage allocation of their time.

Q And all that rolls up into a number.

Are you following me so far?

A That's right because the percentage of their time is then a percentage of their total comp.

Q So what I'm asking you is, did you determine -- so

remember, all those percentages and all that rolls up into a number, okay? Let's call that number X. Are you with me?
A Yes.
Q Did you set or determine what X would be?
A No.
Q Do you know how X was determined?
A By having the relevant people on the list and that the less would hopefully be comprehensive and complete. And the --
Q Do you know who prepared --
A And then, the percentage allocations would be appropriate.
Q Do you know who prepared X? X, again, being the number that all this roles up into?
A Yeah. The starting -- the starting appendix with all those people on it was that task force of legal, compliance, and accounting to provide the starting point. And those documents that are based on people and percentages are living documents that change over time.
Q Do you know whose idea it was originally to have those payroll reimbursement agreements? In other words, you talked about how the prior agreements were changed for best practices.
Do you know whose idea that was?
A I believe it came from the auditors which came from -- the auditors from a tax and a regulatory standpoint. You can't just have whimsical numbers. There has to be a basis for the allocations. And the more directly you can tie it to people

and contribution and a percentage of overhead, the better. And that's -- that's why the new contracts were presented best practices.

Q Because they have to withstand regulatory and tax scrutiny?

A Yeah.

Q Okay.

A Yeah -- or yeah, that's right. Scrutiny or challenge if --

Q So if someone suggests that you pulled numbers out of thin air, $5 million for HCMFA, on an annual basis, and $6 million for NexPoint on an annual basis, would you agree with that?

A No.

Q Okay. And if someone suggests that you pulled those numbers for a reason involving trying to get liquidity into Highland, would you agree with that?

A No. I would say --

Q And if someone -- hold on, sir.

A Yeah.

Q And if someone suggested that you pulled those numbers in order to get tax deductions for the Advisors, would you agree with that?

A No.

Q Okay.

A Yeah.

Q What were you going to say, sir? You were going to explain.

A I was going to say that the purpose of best practices was to avoid any assertions by regulatory or GAAP accountants or tax accountants that it was tax fraud.

What you're describing is tax fraud, which means the people who did it, instead of -- if they did it and they said they did it, and they said they did it because I told them, then they committed tax fraud, and their defense is they didn't do anything about it. Or --

Q That's the Nuremberg Defense I think, sir. But let me --

A -- or complained. And instead they just --

Q Let me --

A -- their defense is going to be I told them?

Q Let me interrupt you again. Let's assume it's the Nuremberg Defense. How long have you known David Klos?

A Several -- you know, a bunch of years. Ten years, probably.

Q Do you have an opinion of his professionalism?

A He's --

Q Prior to this litigation.

A Prior to him being co-opted by --

Q Yes.

A Okay.

MR. MORRIS: Move to strike, Your Honor.

THE COURT: Sustained.
BY MR. RUKAVINA:
Q Prior to the confirmation of the bankruptcy plan, did you have an opinion of Mr. Klos' professionalism?
A I would divide it into two portions. It was before he was enticed --
Q Well, let me --
A -- to work for the --
Q Because we're going to have motions to strike. Let me ask a different question.
MR. MORRIS: I move to strike the word enticed.
THE COURT: Sustained.
BY MR. RUKAVINA:
Q Let me ask a different question. In 2018, would you have believed that David Klos could be -- could possibly create deceptive documents for tax fraud or tax cheat purposes?
A No.
Q What about Mr. Waterhouse?
A No.
Q What about Ms., and I apologize, I count pronounce her name, Thedford. You know who I'm talking about, Lauren.
A Right. No.
Q Okay. Anyone at Highland?
A No. We were a very compliant organization.
Q What about at the end of 2018 when the $2.5 million was

paid as additional money under the payroll agreements. Can you imagine of anyone at Highland that would have done that for some kind of tax cheat or tax fraud purposes?

A No.

Q And if someone testified here that the whole purpose of these contracts was for the Advisors to suck money out of Highland, would you have an answer to that?

A I would say they're not telling the truth, and they're incentivized to not tell the truth.

Q And before Mr. Klos -- well, before -- through the year 2020, would you have expected Mr. Klos to flag any potentially deceptive or potentially unlawful activities or documents to you?

A Yes.

Q You met with Mr. Klos, you met with him regularly, didn't you back then?

A Yes.

Q Would you have expected Mr. Waterhouse to flag or raise issues with you if there was anything deceptive or potentially fraudulent?

A Yes.

Q And did either of those ever raise any issue to you, or a red flag with respect to the Shared Services Agreements or Payroll Reimbursement Agreements?

A Not to me, not to the auditors, not to compliance, not to

HR, not to anybody.

Q Were you surprised when you learned towards the end of 2020 about the overpayments?

A Yes.

Q Were you angry?

A Yeah.

Q Why?

A Why. This has been a most unusual bankruptcy. Right? You have an initial assessment that after getting rid of a couple people the first few months, that everybody else is critical and needs to stay around. And then you work everybody extremely hard, particularly legal and accountants, to really do all the work that Pachulski and DSA filed, and take tens of millions of dollars of fees out. But most of it was prepared by our guys.

And then you get to the second half of '20, and the decision is made that not only is there not going to be any kind of key employee retention, but there's going to be an attack on the employees, and they're not going to get paid their '18 or '19 bonuses, or amounts for '20 either. And then some people who were most critical for preserving the estate get fired for cause. I mean, it's just crazy town.

Q But --

A So that's the backdrop.

Q That's the back drop. So --

A So people were being paid and then --
Q Are you aware, sir --
A I have --
Q Pardon me. Pardon me. Pause.
A Sure.
Q Are you aware, sir, that during all that time, the Advisors were actually paying to Highland bonuses for these employees that didn't get bonuses?
A That's right. And so --
Q So were you angry about that?
A So I was angry we were -- we were overpaying. We were having to make up rightful compensation to people from other pockets to just keep people flat. And at the same time, we're getting overpaid, or we're getting overcharged for the services we are using from Highland.
Q Who are we being overcharged by?
A Highland.
Q And who was supposed to be monitoring our contracts for appropriateness before we paid an invoice?
A Highland.
Q And who has maligned you for the last year and a half in this court and everywhere else?
MR. MORRIS: Objection to the form of the question. This is just --
THE COURT: Sustained.

BY MR. RUKAVINA:

Q We'll move on. You were asked about the I think you said upwards of about $10 million of payments to the senior executives?

A Yes.

Q And you were asked whether you authorized those, and you said yes?

A Yes.

Q Why did you authorize those?

A Those were deferred payments that they were due. In any other bankruptcy in any normal court, they would have been paid multiples of that.

Q Well, whose idea was it to have those payments made?

A Whose idea? It was -- it was the employees who were short-shifted.

Q Did they talk to you --

A I agree with -- yes. They did.

Q Okay. And did they make any representations to you as to whether such payments would be above-board or not?

A We had legal -- like I said, we did check with legal --

Q Okay.

A -- counsel.

Q Well, let's not get too --

A Yeah.

Q -- far into that. Okay. And you mentioned that you

believe that Mr. Surgent or Mr. Waterhouse informed Mr. Seery of those payments?

A Yes.

Q And what is the basis of your understanding on that?

A They were both having -- at that time, both having negotiations with Mr. Seery regarding liability, severance, and potentially staying on with Highland. So I know it was part of those conversations.

Q Were those senior employees the core of your team at Highland?

A Yeah. Part of it, for sure. Yeah.

Q Were you concerned about them disbursing to the wind, so to speak?

A Well, I was concerned that they would be treated unfairly, unprecedented in bankruptcy really, in terms of being deprived of prior bonuses by an estate that's twice as solvent as its debts. You know?

Q And Isaac Leventon was one of those people. Right?

A Yes.

Q And without going into a long sob story, did he have some health issues with his children?

A Yeah. He's got a handicapped kid and a wife in a wheelchair. And somehow they wanted to screw him out of his '18 and '19 bonuses.

MR. MORRIS: I move to strike, Your Honor. This is

just -- this is so irrelevant, and it's so --

MR. RUKAVINA: And Mr. Morris opened the door. Mr. Morris opened the door.

MR. MORRIS: To what?

MR. RUKAVINA: To the $10 million of bonuses.

THE COURT: Okay. Well, that is not the family situation of Mr. Leventon.

MR. RUKAVINA: I'm developing the answers as to why he authorized those bonuses. Mr. Seery was allowed, Your Honor, respectfully, to pontificate for a long time. This gentleman needs to have the ability to tell his story. People are coming to your court saying that he paid $10 million under the table in some nefarious plot to basically have moles and cheats at Highland. Even though Mr. Surgent is still there, I remind you. So I'm giving the man a chance to explain why he authorized that. I'm not allowed to lead, which is why I'm asking it this way.

THE COURT: I'll allow a little more on this topic, that's it.

BY MR. RUKAVINA:

Q Did other of these senior executives also have issues such that they needed money?

A Isaac's was the most acute. And --

Q But did that form a part of your reasoning for authorizing the payments?

A Yeah, absolutely. But again, they were entitled to it. They worked hard, they had maximized value in the estate, and then the professionals in the estate decided to take the estate.

Q Okay. And you mentioned a solvency, and twice the solvency of the estate and liquidity. What did you mean? And if you can, explain because you were also asked about whether Highland was making or losing money in '18 or '19. Explain what you meant when Mr. Morris was asking you those questions.

A The value of Highland estate today is $650 million. And it's sitting on 200 million in cash. The Highland estate really has not changed that much in terms of value. It's really just gone up over the last two years. Okay? There were great efforts to hide and deceive the value of, and not disclose the value of relevant assets. But the value today is 650.

Q What was the value in 2018, 2019, to the best of your recollection?

A Probably a low of 500. Maybe 550.

Q What prompted the bankruptcy filing?

A We one arbitration award that we wanted to term out in Delaware. We wanted to term it out for -- into a one- or two- year note. And then that's it. But we had --

Q Was there --

A We had a settlement with UBS four months, five months

before we -- before we filed for $7 million and 10 million of future business. And HarbourVest was never really a liability.

Q Did Highland file because of solvency issues?

A No.

Q Did Highland file because of liquidity issues?

A No. Well, liquidity issues, we -- we had -- we needed time to raise the money for the -- we needed time to raise --

Q And --

A -- the money for the arbitration award.

Q And sir, you're aware of certain promissory notes that various affiliates and you have with Highland? Are you generally aware of those?

A Yes.

Q And prior to bankruptcy, on occasion would Highland come to you and ask that some of those notes be prepaid for liquidity purposes?

A Yes. Often. And we generally did. Yeah.

Q Was that the primary way that if Highland needed to have a pinch in a liquidity issue, it would raise money?

A Yes. I think once we were down to 50, 60 million. At one point they were as high as 90. I think I paid 9 million in notes in '19. Yeah.

Q Well, the point being can you think of why someone would say that these contracts and the amendments, the 5, 6, and 2.5 million were used to finance Highland if Highland would come to

you to prepay notes?
A They were incentivized. I have no idea why they would say that.
Q Mr. Seery testified earlier, you weren't here, he testified about negotiations in the -- now we can't talk about what happened in mediation. Are you with me there?
A Sure.
Q But he testified generally that the mediation led to a couple deals with the creditors. But as far as you and your businesses, it didn't really go well. Without talking about what was going on at the mediation, did you participate in negotiations on a global or plot (phonetic) plan?
A Sure.
Q Did you participate in those discussions with the principle creditors, the committee members?
A I tried. But the committee members had sold their claims without telling the Court. And we didn't find that out until later.
Q So in fact, they did file at some point in time notices of transfer of their claim. Right?
A About eight months later.
Q What do you know about those transfers?
MR. MORRIS: Your Honor, I guess, like, it's his witness, he can ask. But I'm just going to object on relevance grounds. What on Earth does anything that he's testified to

for the last 20 minutes have to do with overpays?

MR. RUKAVINA: Your Honor, Mr. Morris and Mr. Seery went on at length about how all these were contrived contracts to suck value out of Highland from their creditors. If you look at their proposed findings, they're asking you for findings on that, extraneous findings that will be used in collateral litigation by the way.

So I think that just as that came in, even though I objected on narrative, I objected on relevance, I think he has the right for me to put on some evidence to rebut that. Or if Mr. Morris agrees that all of this is irrelevant, then Mr. Seery's testimony should be struck in toto.

MR. MORRIS: No, number one. Number two, I have nothing to do with any litigation that's being prosecuted by Mr. Kirschner. Let me make that very clear to the Court. I don't communicate with them about what I do. They don't communicate with me about what they do. Like, I don't know what he's doing, but this is a waste of time.

THE COURT: Okay. Well, I think some of it has been arguably responsive to Seery testimony. But things like the claimants sold their claims and didn't disclose it for eight months, I mean, clearly we're going down irrelevant trails there.

MR. RUKAVINA: Okay. Well, we'll wrap it up.

THE COURT: Okay.

BY MR. RUKAVINA:
Q You mentioned that the assets of Highland are 600 million today, including 200 mil in cash. What's the debt against Highland today?
A There's just the claims. There's --
Q How much? How much in total?
A There's 260 million in class eight that were projected to get 60 cents.
Q Just tell me how much in total.
A And there's another 85 of class nine. So it was about 370 of claims. There's 650 advance, there's 200 cash on the balance sheet today. All the claims traded to Fairlawn and Stonehill (phonetic) for $155 million. They were happy to buy them because it was representative they were going to get three --
Q We'll stop --
A -- plus others.
Q We'll stop there.
A Yes.
Q We'll stop there.
A Okay.
Q We'll stop right there. But the point is that to your understanding, there's more than enough assets at Highland today to pay all creditors in full?
A Yes. And by the way --

Q Let's talk --
A -- Highland could have paid the 150 million, retired all the claims, and given us the keys.
Q I understand.
A Seery gave the claims to his friends that he used to work for and with --
MR. MORRIS: You know, Your Honor, I'm just moving to strike. This is ridiculous.
THE COURT: Sustained.
THE WITNESS: It's all going to be in the trustee letter.
BY MR. RUKAVINA:
Q Mr. Dondero, it will all come up --
A It's what we were --
Q Hold on. Hold on.
A We're doing every recusal --
Q Please stop. Please stop.
A We're doing every --
Q Mr. Dondero, please stop.
A Okay.
Q All this will come out --
A Okay.
MR. RUKAVINA: -- into the light at the appropriate time. Thank you, Your Honor. I'll pass the witness.
THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You're really angry, aren't you? You're really, really angry, aren't you?

A No. I'm trying to weigh the what should have been a normal bankruptcy and it's turned into a financial mugging. We had 50 million. Your firm was going to make 100 million.

Q I work pretty hard.

A Not enough.

MR. RUKAVINA: This is ridiculous, Your Honor. He's taunting my witness. I mean, you're really, really angry. This is badgering, Your Honor. This has gone the point of professionalism.

THE COURT: Okay. Sustained.

BY MR. MORRIS:

Q Frank Waterhouse told you about the overpayments?

A That's my --

Q That's how you learned. Right?

A That's my recollection.

Q Frank told you. Right?

A That's my recollection.

Q And when did he tell you?

A November, December.

Q He actually told you after December 8th, 2020. Correct?

A That's my recollection, yes.

Q Okay. Take a look in the Advisor's binder, Exhibit Q.
A Exhibit which one?
Q Q. Do you see that's an email from Dave Klos to Frank Waterhouse?
A Yes.
Q And attached to it is the analysis that purports to show the overpayment?
A Yes.
Q So would you agree with me that you learned from Mr. Waterhouse about the overpayment on or after December 8th, 2020?
A No.
Q No? Even though Mr. Waterhouse is just receiving the analysis as of this time?
A You're assuming this is the first analysis that was done, and this is the first time Frank knew. I don't know those things. My recollection is November, December.
Q So it's possible that it was on or after December 8th. It's at least possible, right, that it's December.
A I don't want to speculate.
Q What did he tell you?
A That we had been over billed for people that no longer worked at the company.
Q Did he tell you when he learned that these people no longer worked at the company?

A No.
Q Did he share that analysis with you?
A No. Not that I recall. I don't remember seeing that before.
Q Had you ever learned of this analysis?
A I know that detailed analyses were prepared. I just -- I just don't recall receiving that one.
Q Did you speak with Mr. Waterhouse on the phone or in person, or by email? How did he tell you? Do you recall?
A I don't remember.
Q Do you recall if anybody else was present when he told you?
A I don't recall.
Q And is it your understanding that the basis for the overpayment is that the Advisors were being charged for employees who were no longer on the list that was attached to the agreement?
A Yeah, I think that was the bulk of it. And then probably percentages changed also.
Q Okay. Do you know how many people on the list were terminated before the petition date?
A No.
Q Do you know -- so you were in control of both Highland and the Advisors from January 1st, 2018 until the end of 2019. Correct?

A Yes.
Q And Mr. Waterhouse was responsible during that period for overseeing the administration of the Advisors' contracts. Is that right?
A Yes.
Q And it's your -- the reason why you're so mad is because the Advisors were paying for employees who were on that list who had been terminated. Is that right?
A No. I'm mad because Seery's trying to steal the company for his friends.
Q Listen. You're mad because -- I just want to focus on the overpayments, okay? On the overpayments, you're mad because Highland has charged the Advisors for employees that you believe they shouldn't be doing because they've been terminated. Right?
A I answered this question already. I was potentially angry with the overpayments because the debtor decided not to pay bonuses for people for '18 and '19, decided not to pay any bonuses for senior people, and then rough handled and sued hardworking employees that did most of your work out the door.
Q Can you open your exhibit binder please, sir, to Exhibit 14? And go to Page 12 of 18.
A Page 12 of 18?
Q Yes.
A Exhibit 18?

Q It's Exhibit 14, Page 12 of 18.
A Exhibit 14. Page 12, yes.
Q Okay. Do you see there's a list of people there, and it continues to the top of the next page with Scott Wilson?
A Sure.
Q Okay. Are you familiar with the concept of dual employees?
A Yes.
Q And do you understand that the dual employees were listed on the exhibits attached to the payroll reimbursement agreement?
A If that's what it says. I'm not -- I know what dual employees are. I don't know how this contract worked.
Q Okay. Do you see -- so you don't know how the contract worked? But yet you think that there's overpayments. Right?
A I know generally how it works. I don't know specifically on dual employees. But there are people who are allocated and it's based on generally a percentage of time.
Q Okay. So I just want to really get your understanding and to the heart of your allegation that there's an overpayment here. Do you see that the interrogatory asked, and I'll represent to you that these are interrogatories that were answered by the Advisors. Okay?

We asked identify the date you believe each form of dual employee identified on the exhibits to the Payroll

Reimbursement Agreements departed the debtor. And do you see that they've listed each of the dual employees with the dates of departure?

A Yes.

Q Okay. And do you see for example that -- I want to pick the right one here -- Michael Phillips (phonetic). Do you see Michael Phillips was terminated in February 20, 2018?

A I don't know if he was terminated. But yeah, that's the date. Right?

Q That's the date he left. Right?

A Yes.

Q And that's the date the Advisors admit knowing that he left. Right?

A It appears so, yes.

Q And if you look at interrogatory number four on the next page, it says the Advisors were generally aware of the employee's terminations and departures as they occurred. Okay? So would you agree with me that the Advisors were generally aware of Michael Phillips' departure on February 20th, 2018?

A Yes.

Q And is it your testimony that if the Advisors paid for Mr. Phillips in March of 2018 there was an overpayment? Is that the overpayment you're talking about that they shouldn't have paid for Mr. Phillips in March because he had been terminated?

A I assume this is the last day that they were getting paid. Right? So I don't want to quibble on whether this was their exit date and they got paid for severance or something else. But I think what the overpayment is is that most of these people were continuing to be factored into the number nine, ten, twelve months later.

Q They were factored into the number for every single month in 2018 and 2019 when you were in control of the entities. Are you aware of that?

A But then there should have been a true-up.

Q And Frank Waterhouse was responsible for that. Correct?

A Him and his group, yeah. There should have been a true-up. Correct.

Q And do you know if a true-up was required by the contract?

A There always is in living, breathing contracts.

Q Let's turn to the contract and you point me to the provision where you believe that there's an obligation --

MR. RUKAVINA: Your Honor, this is nonsense. He's said that he's never read these contracts, that he has no personal knowledge. He's badgering and it leads to legal conclusions.

MR. MORRIS: Your Honor, he is testifying that he believes that there is a contractual obligation to do a true-up. If he wants to say that I'm not aware of anything but I just assumed that one would happen, I'm happy to live with

that. If that's --

THE WITNESS: I'm not aware, but I assume there would be a true-up.

BY MR. MORRIS:

Q Okay. So you assumed that there would be a true-up. Right?

A Yes.

Q Did anybody ever tell you there was a true-up?

A I would assume there would be a true-up. No one told me until November, December of '20.

Q Okay. Did you ever ask anybody at the end of 2018 if there was a true-up?

A No, I never asked.

Q Did anybody tell you at the end of 2018 that there was a true-up?

A I don't know if it was material. It might have been just this one kid that left. I have no idea.

Q We can look at the whole list if you want to do that. Okay?

A No. But I don't know. And no one told me there was a true-up.

Q That's my only question.

A Or no one told me there wasn't, either. I'm not aware.

Q Okay. So you didn't ask if there was a true-up, and nobody told you there was a true-up at the end of 2018.

Correct?
A Correct.
Q You didn't ask if there was a true-up, and nobody told you that there was a true-up at the end of 2019. Correct?
A I don't know.
Q Okay. In fact, you have no knowledge that there was ever a true-up of any kind done with respect to the payroll reimbursement agreements. Correct?
A I don't know. I don't know if it was material. You guys were both implying a few minutes ago that there was a two and a half million dollar true-up one year, an additional payment for something.
Q Let --
A So, but I don't know the specifics. All I know is when they alerted me at the end of 2020 that oh my God, we've been overpaying, it's not reconciled, they're not cutting back the payment, they had an expectation in the way they told me such that I'd stop paying because we were paying over. They had an expectation that there was some kind of true-up or they wouldn't have told it to me to get a stop paying this immediately out of me --
Q Who's they?
A -- which is what happened.
Q Who's they?
A Frank.

Q Frank is they?
A Yeah, Frank is they. Yeah.
Q And did Frank tell you that the way that the methodology for his decision that there was an overpayment was to say that we were paying for employees who were no longer at Highland?
A We were overpaying based on the contract, based on largely people weren't there. Now whether or not we were also paying for people who the percentage was wrong, I don't know. But he -- he expressed it with Umbridge (phonetic), and with Awe (phonetic). Umbridge and Awe and that's where --
Q Umbridge --
A -- that's where we stopped paying.
Q Okay. And -- but is it fair to say at least your understanding is that the bulk of the claim is that you were paying for employees who were no longer employed at Highland? Is that basically it?
A My understanding is largely that.
MR. MORRIS: Okay. No further questions, Your Honor.
THE COURT: Recross?
MR. RUKAVINA: I have no follow up, Your Honor.
THE COURT: All right. You're excused from the witness stand, Mr. Dondero.
THE WITNESS: Thank you.
(Witness excused)
THE COURT: All right. Shall we take a break and

then --

MR. MORRIS: Yes, Your Honor. Yes.

THE COURT: Let's take a ten-minute break, please.

(Recess at 2:58 p.m./Reconvened at 3:09 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. We're back on the record in Highland.

Mr. Morris, what do you have?

MR. MORRIS: Last witness.

THE COURT: Okay.

MR. MORRIS: Mr. Norris. I just need a second to find my questions.

THE COURT: Okay, we'll go ahead and get Mr. Norris up here and sworn in.

Please raise your right hand.

DUSTIN NORRIS, PLAINTIFF'S WITNESS, SWORN

THE COURT: All right. Please be seated.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Norris.

A Good afternoon.

Q You've been here for the last couple of days. Right?

A I have.

Q I hope this is a little bit more low-key than the last witness.

A I hope so, too.
Q Okay. I don't expect this examination to be particularly lengthy. So I would just ask you to listen carefully to my questions. Do the best you can to -- to answer them.
From 2000 and -- are you -- are you currently employed by either of the Advisors?
A I'm employed by NexPoint Advisors.
Q And what's your title today?
A The title of the -- my operating title is Head of Distribution and Chief Product Strategist.
Q Okay. And do you have a roll with HCMFA?
A I am an officer of HCMFA.
Q And do you have a title?
A Yes. Executive Vice-President.
Q Okay. And were you affiliated with those two entities as of January 1st, 2018?
A I was.
Q And in what capacity did you serve for NexPoint as of January 1st, 2018?
A The same capacity as I serve today.
Q And did you serve in the same capacity for HCMFA as of that time?
A I believe so, yes.
Q Okay. So your role hasn't changed; your titles haven't changed in the three or four years since 2018. Is that fair?

A I don't believe so.
Q Okay. You didn't -- you've listened to the testimony in this trial so far?
A I have.
Q Okay. I'm just asking that question to try to speed this up a little bit.
You're aware that in late 2017 through May of 2018, there were a number of new contracts and changes made in the way that the Advisors compensated Highland for services. Is that right?
A Yes. I'm aware.
Q Okay. But you didn't personally participate in any of the discussions during that time period about the changes that were made and the methods and amounts that were going to be paid for services. Fair?
A No. I did not participate.
Q Okay. And you played no role in formulating, drafting, or administering the sub-advisory agreements that were prepared for NexPoint and HCMFA in March of 2018. Correct?
A Correct.
Q In fact, were you even aware that sub-advisory agreements were prepared for those two entities at that time?
A I don't remember being involved or having any -- any awareness.
Q Okay.
A At that time.

Q Okay. And you played no role in the replacement of those sub-advisory agreements with the payroll reimbursement agreements as of May 1st, 2018. Right?
A I -- I played no role.
Q So you didn't -- you didn't participate in discussions about what that document was intended to do. Correct?
A That's correct.
Q And you didn't participate in any review of the language that was going to be used in the document. Correct?
A Correct.
Q And you didn't review Exhibit -- the Exhibits A that I think you're familiar with, that were attached to those agreements. Correct?
A Not at that time.
Q And you had no basis of knowing whether the allocations that were used as of May 28th -- as of January 1st 2018 were accurate in any way. Right?
A Well, based on my working knowledge and my interaction with employees at HCMLP and the Advisors, I can see the allocations and have assumption on the reasonableness. But I was not involved at that time in assessing the reasonableness.
Q When did you learn that Exhibit -- Exhibits A existed?
A Over -- I don't remember exactly.
Q Do you remember what year it was?
A Probably '19 or '20.

Q Okay. And do you know -- kind of --
A Maybe '18. It was sometime after it was drafted.
Q Okay.
A And signed.
Q All right. So we've used the definition called "relevant time period" to mean from January 1st, 2018 until the end of 2020. Okay. Is that fair?
A Yes.
Q Okay. Do you remember at all where within the relevant time period you first learned that these Exhibit As existed?
A I don't remember the exact time, no.
Q Do you remember if it was before or after the bankruptcy?
A I don't remember.
Q Do you remember if it was before or after the Independent Board was appointed?
A I don't remember.
Q Okay. Did you form an understanding at some point -- no, withdrawn. We'll get there.

So you didn't participate in any discussions at any time in the spring of 2018 about what the Payroll Reimbursement Agreements were intended to accomplish. Correct?
A I did not.
Q And you didn't play -- are you aware that NexPoint entered into a new Shared Services Agreement as of January 1st, 2018?
A At that time was I aware --

Q Yes.
A -- or am I aware now?
Q Were you aware at the time?
A I was not.
Q And you didn't play any role in the drafting, in the formulation, or the administration of the NexPoint Shared Services Agreement. Correct?
A No, I did not.
Q And even though it wasn't signed at that time, you played no role in the drafting or the formulation or the administration of the HCMFA Shared Services Agreement. Correct?
A That's correct.
Q Okay. Do you know now that there were amendments to the Payroll Reimbursement Agreements at the end of 2018?
A I do.
Q You didn't play any role in drafting, or administering, or making any decisions in connection with those amendments. Correct?
A No. I have no personal knowledge.
Q And so you have no personal knowledge as to how those amounts were calculated. Correct?
A Correct.
Q You have no personal knowledge that any true-up was done that formed the basis of the numbers in those amendments.

Correct?
A At that time, no. But I was told there was a true-up that was done.
Q Okay. But you have no personal knowledge that a true-up was done. Right? Somebody told you that?
A Somebody told me there was a true-up, yes.
Q And who told you that?
A Mr. Klos.
Q And when did Mr. Klos tell you that?
A December -- December 2020.
Q So you were speaking with Mr. Klos --
A Uh-huh.
Q -- in December 2020. And it's your testimony that he said that the amendments that were done in 2018 were the result of a true-up?
A He didn't tell me about the amendments. He told me that a true-up had been done in 2018, but we didn't discuss the specific amendments.
Q Okay. Do you have an understanding of what a true-up is in that context?
A I do.
Q And what's your understanding of what a true-up is?
A Well, based on the conversation we were having, which was around the actual payments and the employees that were on Schedule A, all right, we saw the emails earlier that Mr. --

Mr. Klos discussed.

We were talking about those overpayments. And as we were -- you know, Mr. Sauter and I were trying to discover what had actually happened. He told us there was a true-up done in 2018. There was no similar true-up done in 2019 or 2020 because of the bankruptcy filing in October 2019.

Q Okay. Are you aware that as of the date of the amendments, I think the number is nine of the employees, the dual employees on the Exhibit A were terminated?

A I'm aware that there are employees that as of that date that have been terminated.

Q Can you tell Judge Jernigan why you believe that with the loss of approximately a third of the dual employees why you think a true-up would result not in the diminution in the amounts owed, but an increase by $2.5 million in amounts owed; how does that make sense?

A Yeah, I don't have any personal knowledge, as I mentioned on what the calculations, how they were done, what went into it. I would just be speculating if I said here is how or why. I know Mr. Klos testified that percentages aren't of time spent aren't perfect.

There could be compensation. Right. That one person received due to Fund performance. Again, I'm -- I would be speculating. I don't know.

Q So it's possible that even though employees left, that

Highland would be entitled to even more money if the people who remained pick up the slack. Is that fair? And got paid more. That's possible. Right? That's what he told you.

A Do you want to repeat the question?

Q You want to repeat the question?

A He told you, if I understand you correctly, that even though almost a third of the employees left, Highland was still entitled to get millions of dollars more money because the services that had been provided by those dual employees, were just picked up by other people?

A No.

He didn't tell me that. He said a true-up was done. He did say it resulted in a slight payment to Highland. But he didn't go into any of the calculations or the why.

Q Okay. But you do understand that more than -- that approximately a third of the employees had been terminated before this -- these amendments were entered into. Correct?

A I'd have to see the specific names, but there were a number of them had been terminated, yes.

Q Okay. And even though the number of employees went down, the payments when up by $2.5 million. Correct?

A I have no reason to question the amendments or the wording in the amendments.

Q Okay. You had access to headcount information at all times. Correct?

A Not at all times, but I would receive a monthly report that's been shown in the emails.
Q And we looked at that, and you got that headcount report every single month for the three year period that we're talking about. Right?
A I believe so. And I don't know for sure that I -- when I was added, I was added at some point over the last few years, but I did receive it.
Q We're certainly not going to look at every one of them. Let's see if --
A If you go to January 2018, that's probably the quickest way to rule it out. Because I never got removed once I was added.
MR. MORRIS: Just one moment, Your Honor. I apologize.
THE WITNESS: Is there an exhibit I should be looking at?
MR. MORRIS: Not yet.
THE WITNESS: Okay.
BY MR. MORRIS:
Q So if you can go to Exhibit 88. Do you see that this is the headcount report that was delivered on February 1st for the month of January 2018?
A It is.
Q And your name is on it. Right?

A It is.
Q And so your understanding is that for every month covering the headcount report, from January 2018 until the end of 2020, those are headcount reports that would have been delivered to you. Right?
A That's correct.
Q So you're not sure when you learned of the existence of Exhibit As, but whenever that was, you could have figured out yourself, who on Exhibit A was no longer employed at Highland. Right?
A Absolutely.
And -- but the key assumption was that we were reimbursing for only employees that were still employed. And that was always my expectation, once I learned about Exhibit A.
Q Did you talk about that with Frank?
A What part?
Q Did you tell Frank -- when did you develop that expectation? In December 2020?
A No.
At some point between the actual creation of the agreement, when I first saw it, and understood it was a payroll reimbursement agreement. And there was an exhibit that had percentage allocation of employees that were one, serving as dual employees, and two, providing investment advisory services. That was the actual purpose of the agreement, right,

was for reimbursement.
Q Did you ask Frank, Frank, how come you kept paying the money when all these people left.
A I did.
Q What did he say?
A He told me there was nothing he could do because of the automatic stay. He and Dave Klos were in a meeting. That was the first time I had heard the word automatic stay.
Q Uh-huh.
A And that he had brought it. They -- they had calculations. And that he had brought it to the attention of DSI. And the told him -- and he said inside and outside counsel. And there was nothing he could do because of the automatic stay.
Q He did not say outside counsel.
A He did. Well, I should say in his December -- in our December meeting he said counsel. We talked again over multiple times. And at the end of January on a call, he said inside and outside counsel.
Q January of 2021?
A Yes, I --
Q Did you hear him testify yesterday that he never told me or anybody in my firm?
A I did, yes.
Q So -- so maybe you misheard him?

A I may have misheard him, but I --
Q Okay.
A -- I -- I did take -- after that call I did take notes. And I wrote down inside and outside counsel. I could have mis-remembered. But I had written that down.
Q Did you ask him why he didn't make any change from January 18 until the petition date?
A January 18th of which --
Q Let me restate the question. Did you say hey, Frank, okay, you've given me your answer after DSI comes along. But what about the two years before that? Why didn't you make any adjustments for the two years before that, when nobody ever heard of Fred Caruso or Jim Seery.
A Yeah.

They told me there was a true-up done in December of 2018. And then I actually was trying to figure out, make any sense of the fact that there were employees had been -- many of them, like 20 employees that were no longer there. And so discussing this with Dave and Frank, I -- I realized and learned from them they were in a tough situation. Why didn't they do anything. Well, when they told me, it made sense. They said December 2018 there was an annual true-up.

Fast forward to the bankruptcy filing in October 2019 and to this point I wasn't really involved in all of the bankruptcy time lines or process. I'm separately running my business. So

they tell me that okay, October it was filed. There was put in place something they couldn't change in the agreements. Because of the automatic stay.

Again, I'm not an attorney. It's the first time I'm learning of the bankruptcy law. But in 2019 there was no true-up done. Nor in 2020. Right. So there was something done, and it would have been done at the end of '19 and '20, had there not been a bankruptcy in place.

So -- and to me -- and the reason I remember that specifically is a light bulb went off to me and said that makes sense. Okay. They were trying to do what was right. They understood it. They would have made a true-up or an adjustment. Whatever you want to call it for the proper people that were serving under these agreement.

But they were told that they couldn't. And at that point we had to, you know, go our way of actually filing an admin claim for that.

Q Did you hear Frank Waterhouse testify yesterday that he's not aware of any true-up?

A I don't remember specifically. But it was David Klos that told me about the true-up. Told me and Mr. Sauter.

Q Did you hear him testify yesterday that there was no analysis of any kind done to support the $2.5 million?

A I don't know if he said he didn't -- there wasn't an analysis, or if he said he didn't recall. Because I know a lot

during that he didn't recall.
Q He actually said that Jim Dondero said the number. Does that refresh your recollection?
MR. RUKAVINA: Your Honor.
THE WITNESS: I think that was Mr. Klos.
MR. RUKAVINA: Your Honor, I'm --
BY MR. MORRIS:
Q That -- that is who I'm talking about.
A You said Mr. Waterhouse.
Q Oh, I apologize.
A Did he not?
MR. RUKAVINA: Yes, he did.
THE WITNESS: Okay, sorry.
MR. MORRIS: Okay. Thank you.
THE COURT: Let's ask again and make sure we're clear.
MR. MORRIS: Sure.
BY MR. MORRIS:
Q Okay, so it's your testimony that -- was it just Mr. Klos or was it Mr. Klos and Mr. Waterhouse who told you that there was a true-up at the end of 2018?
A Mr. -- it came from Mr. Klos. I believe Mr. Waterhouse was there. Mr. Sauter, as well was told, along with me. By Mr. Klos.
Q Okay. You did a damage calculation for purposes of this

case. Right?
A I did.
Q And what you did is you took the amounts paid and reduced it by --
MR. RUKAVINA: Your Honor, let me just object now. Are you going to agree to the admission of the damage calculation?
MR. MORRIS: Sure, I'll agree.
MR. RUKAVINA: Okay. Your Honor, that's going to be -- Thomas is that H and I? It is what it is. Your Honor, it's Exhibit G is the PDF printout. That's the one we had the stipulation on yesterday about the math. Is that right?
MR. MORRIS: Yes.
MR. RUKAVINA: And then the electronic version is H. Is H. So I'll move to admit G and H.
THE COURT: And you agree to it?
MR. MORRIS: Yeah.
THE COURT: Okay, they're admitted.
(Defendants' Exhibits G and H admitted into evidence.)
BY MR. MORRIS:
Q There's no expertise. There's no special skill that you brought to that analysis. Right?
A It's simple math.
Q It's simple math. Right? And I think that's what you told me in the deposition. All you did was you took the money

that was paid, and you reduced it by the compensation for the dual employees who were terminated. Fair?

A I -- I took month by month the employees that were employed.

Q Uh-huh.

A And their total compensation multiplied by the allocation percentages. And as employees dropped off, so did the compensation.

Q Okay. And once --

A Or the reimbursement, I would say.

Q And once you had the data, how long does it take you to run them all?

A If I -- say if I wanted to change assumptions?

Q Sure.

A You could do it fairly easily if you know Excel.

Q Five minutes?

A To make sure that it's accurate, maybe longer. I mean it --

Q Maybe ten.

A Not -- again, the math part is easy.

Q Okay.

A It's --

Q And so is there any reason that anybody on behalf of the advisors, couldn't have done that analysis on February 1st, 2018 to take into account the employee who left in January of

2018? Any reason at all that they couldn't have done it then?
A We had relied and outsourced that to Highland.
Q Okay.
Okay. And the person who would have overseen what you assumed would have happened -- right? Because you assumed that Highland was making these changes. Right?
That's your testimony. Your testimony is that you sat back for three years and you assumed Highland was only charging what you thought they should charge. Right?
A Yeah.
And a key component of that -- if there's payroll data involved, we didn't have access to that. There was a very limited number of people. Highland employees only. That's an important component of this. So yeah, we had relied on Highland. We didn't have an accounting function.
Why was I -- I say it's simple math. I had to create the spreadsheet. I'm a CPA. I worked at a big four accounting firm. I worked in Highland's back office when I started as a fund accountant. I managed. I was a senior accounting manager.
Q You have-huh.
A So -- so but that was -- ended in 2013. So there's a number of Excel skills. We didn't maintain that. I shifted roles. Focused more on the growth and marketing. But we -- we outsourced those functions to Highland.

Q How long did it take you to create the model? A day or two? Less? Once you had the data.
A Yeah, it was just a couple few days.
Q So why didn't the advisors just create a contact that said every time a dual employee left, let's just reduce the amount that's paid by their compensation, in real time? You could have created the model, and in five minutes, instead of doing this true-up at the end of the year, why didn't they do that?
A The people that helped create the contract were Highland employees. The ones that knew about the calculations. The ones that had access to the data. We didn't have a separate team saying well, let's shadow everything that Highland is doing, for contracts. That is what they were doing. That was their function.
Q And they all reported to Frank Waterhouse. Correct?
A Yes.
Q Can you identify one person who you assumed would be administering the contract, who didn't report to Frank Waterhouse?
A No.
Q Thank you.

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

THE COURT: All right. Pass the witness.

CROSS EXAMINATION

BY MR. RUKAVINA:

Q This might be a bit, so if you need some water, let me know.
A I got -- I still have some. Thank you.
Q So I think Mr. Morris has gone through some of these issues. But do tell the Judge, please about your educational background. On a high level.
A Yeah, I have a master's degree in accounting from Brigham Young University and a bachelor's degree in accounting and I have a CPA license.
Q Okay. Any other professional licenses?
A Yeah, I have a FINRA Series 7, 63 and 24 licenses.
Q How old are you?
A 38 years old.
Q Have you ever been disciplined professionally with respect to any of these licenses?
A Never.
Q Okay. Are you a family man?
A I am.
Q Are you a religious man?
A I am.
Q Do you swear?
A I don't.
Q Do you drink?
A I never have.
Q Any trouble with the law?

A No.
Q When did you first join Highland?
A 2010, June of 2010.
Q Before that you mentioned you were with some other accounting --
A I was at Deloitte and Touche.
Q What did you do there?
A I was an auditor, an outside auditor, auditing large corporations.
Q And when you joined Highland, what was your role?
A I was a fund accountant in the Hedge Fund and Private Equity Fund Accounting Group.
Q And tell me about your progression at Highland and how you ended up coming to the Advisors and when? Again, at a high level.
A Yeah. So when I joined Highland, I started out overseeing accounting and operations, cash management for several of the large hedge funds, private equity funds, and separate accounts. Worked there for two years, got great training, and was given the opportunity to then manage for our retail complex, the accounting and operations team.

So I moved employers to Highland Capital Management Fund Advisors around July of 2012. At that time Highland HCMLP, the hedge fund side of the business or institutional had a separate accounting and operations team than the retail side. And so I

moved over and I was managing accounting, operations, trade settlement, cash management, as well as the broader accounting functions for about 22 mutual fund and closed-end funds.

I did that for a little while and then transitioned into what we call product strategy or product development. So developing new funds, merging funds, acquiring funds, launching training sales people and, at that time, somewhat transitioned the services from our retail funds to the Highland's back office, merging those in. And my employees moved over, and became employed by HCMLP, as well.

So, yeah, I have had experience in several different parts of the business. Then from there I -- I worked on our closed-end funds and continued to manage, became director of product strategy, and then chief product strategist, and then took over our sales team and became the president or broker/dealer managing all of the marketing and relationship management --

Q This is still while at Highland?

A -- inside sales. This is all at Highland Capital Management Fund Advisors/NexPoint.

Q Okay.

A From 2012 until the present day.

Q Okay. And in those ten years, I take it, you've interacted with Highland Capital Management LLP, repeatedly?

A Yes, extensive.

Q At a high level in '18, '19, '20, what did the debtor do? What was the debtor's business?
A '18, '19 and '20? The debtor's business?
Q Yes.
A Largely -- obviously, they had a services business where they provided shared services. But that was a function of, they were providing it for various advisory entities. They managed assets, largely credit, private equity, some at-public equities and included providing services to our advisors.
Q And in that same time frame, '18, '19 and '20, what did the advisors do? I mean what was their core business and did it change at all over that time?
A Yeah.

So when I moved over to the advisors in 2012, we were largely focused on public equities and credit, which was a specialty of Highland. And so we relied heavily on those services from a back-office and front-office perspective over the coming years.

But we started -- in -- in 2012 our advisors had almost no real estate assets. And as we shifted from 2012 into '15 to '18, the real estate business grew significantly. And so we just started developing a real estate business in-house. Our investment professionals.

And if you look at the assets today, approximately maybe three-quarters are real estate assets. Where less than a

quarter are credit and equity and private equity.
Q And on that point, you heard Mr. Powell, and we talked about the retail board some this morning, the $3 billion. Did you hear all that?
A I did.
Q Generally, what percentage of either the advisor's business or assets under management, whatever the appropriate metric is --
A Uh-huh.
Q -- you tell us. How much of that whole pie do those retail funds represent?
A Yeah.
So we today, NexPoint Advisors and HCMFA manage approximately $11 billion in assets. And the retail funds as Ethan testified are approximately 3 billion. So less than 30 percent.
Q Would that also be fair to say that that's about how much of your internal time -- the Advisors time an employee is? Servicing the funds is 25 or 30 percent? Or would the fraction be different?
A Meaning the Advisor employees?
Q Yes.
A It depends.
There's some of them that spend 100 percent in non-retail products. But a number of people do spend -- maybe it's an

approximate amount of time, yeah. So we have you know publicly listed reads; we have private reads; we have 1031 exchange vehicles. So there's -- there's a lot of other businesses outside of that.

Q You know, we've heard talk about so-called front office. How do you, in your mind define or how do you understand front-office personnel to mean or to be?

A Yeah. So it is someone providing investment advisory services.

Q Are the front-office employees different back ten years ago when the Advisors were doing more debt and equity than they would be today, when they're doing more real estate?

A Actual employees at the Advisors?

Q Or -- of the actual professionals that would be providing those front-office services.

A Yes.

Historically we did rely a lot more on Highland. Right. Given their credit expertise. Given the assets that we managed. And that's part of the, you know, payroll reimbursement agreements.

Today, you know, from call it maybe 2018 to today, we've gone from maybe 5 NexPoint, for example, investment professionals to around 25. And that has been -- and those are almost all real estate focused individuals.

Q So let's zero in on that. Turn to Exhibit A. That's one

of the Payroll Reimbursement Agreements.

MR. RUKAVINA: And, Your Honor, they have the same Exhibit A. It's just different percentages.

BY MR. MORRIS:

Q So are you familiar with these 25 people here?

A I am.

Q Okay. I'm going to avoid that first name. I tried and I did not do a good job.

MR. MORRIS: Mr. Rukavina, I apologize. Which exhibit are you?

MR. RUKAVINA: I'm sorry. My Exhibit A and Exhibit A to my Exhibit A. Which is the list of employees.

MR. MORRIS: And is it NexPoint or is it -- because I don't think I have it. You may have the --

MR. RUKAVINA: I'm sorry. It's HCMFA.

MR. MORRIS: Okay, thank you.

BY MR. RUKAVINA:

Q Did you at one point in time know all of those 25 people?

A Yes.

Q Did you know what they did?

A Yes.

Q And tell us either on a high level or zero in how many -- or group in how many of them did the debt and equity front-office services vis-a-vis real estate services.

A Sohan was the credit guy. Cameron being the private

equity --
Q And private equity is that -- did you include that when you're talking about debt and equity. Is that the same thing as equity?
A Equity and private equity. Yes.
Q Keep going. Keep going.
A Mete (phonetic) Burns, credit. He's a credit expert. Hunter Covitz, CLOs, which is collateralized loan obligations, made up of credit. Neil, another CLO guy. Jim, as you know. Eric Fedorshin (phonetic), worked on the credit team; Matthew Gray was a credit analyst; Sanjay Gulati 100 percent of his time was allocated to HCMFA. He was 100 percent associated with our main clone, ETF, which was a credit fund that was around 5 or $5 million at one point, and is $30 million today.

Chris Hayes (phonetic) was a loan or credit trader; Bobby Hill (phonetic) bounced between teams. Brendan McFarland (phonetic) was on the credit research team. Carl Moore (phonetic) with Private Equity; Igor (phonetic) was credit. David Owens (phonetic) I believe was a credit trader.

Trey Parker (phonetic) was head of credit research and then became co-CIO and ran the credit and equity investment process.
Q CIO, chief investment officer?
A Chief investment officer. Andrew Parmenter (phonetic) was brought in. He started in around 2017. Was a partner of the

firm. Michael Phillips (phonetic) was a credit guy. John Pavlish (phonetic) was head of credit research after -- after Trey Parker was promoted to co-CIO.

Philip Ryder (phonetic) I believe he was -- yeah, I don't know the specific, either credit trader or credit. Kunal was a credit. Allen Smallwood (phonetic) was a credit guy. Mara (phonetic) was public equities, maybe private equity.

Jake Tomlin (phonetic) was managing director on the credit team. Ann Seager (phonetic), I believe, was a par credit analyst who ran credit.

Q And you mentioned that in that same period of time -- '18, '19, '20 -- the advisors went from having 5 in-house investment employees to, what did you say, 25 or 27?

A Approximately, yes.

Q Okay. And were -- so the delta is whatever, 20, let's just say. That increase?

A Yes.

Q Okay. Were those new employees -- were any of those new employees any of these employees?

A As speaking today number of employees?

Q Yeah.

A So one of them did come over when -- actually two. But he's no longer there. Hunter Covitz after February 2021 and Sohan.

I don't believe any of the others. Most of them were gone

by then. I think there may have only been five come February.
Q Well, that's my question.
A Yeah.
Q That's my next question. Did it matter to the Advisors for purposes of their business that 20 of these employees over a period of time were no longer there?
A It didn't.
As our business had morphed into much more real estate focused. We did rely some on them. Right. We still had the five or six that were still there. But it -- it wasn't a -- a big part of our business at that point.
Q Because there's been some implication made by Mr. Klos that as these employees fell off, Highland made up for them with other employees. Do you agree with any such assertion?
A I don't. I -- I -- I believe they hired one front-office investment professional. The existing professionals may have pitched in some. But a lot of those functions were at our advisors. And I -- I mentioned the real estate professionals. But there were -- there were a couple other in professional HCMFA, Joe Sowin who became co-CIO when -- when Trey Parker was promoted to co -- head of private equity.
He was an HCMFA employee. When Mark O'Connell (phonetic) left and then Trey Parker left, Joe Sowin and Jim Dondero were co-CIO's. Both employees of our Advisors.
Q So I think it's important for Your Honor to understand the

relationship between the PRAs and the shared services agreements.

So still looking at this Exhibit A, were these the only Highland employees that provided services to the Advisors?

A Any services or front-office services?

Q Any services.

A No.

Q There were a number of Highland employees providing back-office and middle-office services. Is that correct?

A That's correct.

Q And do you have an understanding pursuant to what agreement those employees were being used?

A That was according to shared services agreements.

Q So is it important to clearly delineate between the two types of agreements?

A It is.

Q If we want to find out what services were being provided?

A Yes.

Q Okay. And just while we're on here, so that Her Honor understands the rest of our discussion, go to Page 1 of this exhibit, Exhibit A. And Section 2.01.

A Yes.

Q I think you mentioned earlier, Mr. Morris was asking you that it shouldn't just be a dual employee, but needs to be providing investment services. Do you remember mentioning

something like that?
A Yes. They -- they need to be a dual employee --
Q So that's --
A -- and then they must be able to provide advice to any investment company, investment related service, I think how I explained it in -- provide advice to any investment company.
Q So if some Highland back-office employee or middle-office employee is providing services to the Advisors, would you consider them to fall within this contract?
A If they're providing any services, or if they're providing --
Q No, if they're --
A -- advice?
MR. MORRIS: Your Honor, I object to this whole line of questioning. He's asking a witness to interpret contracts that he has no personal knowledge of. And this is what I warned the Court about in my opening statement yesterday. The witness must testify about personal knowledge and should not be here to interpret contracts that he didn't negotiate, he didn't participate in drafting, and that he never read until recently.
THE COURT: Response?
MR. RUKAVINA: Your Honor, he's not interpreting a contract. We're trying to explain -- first of all, we're going to work to his damages model. So his understanding of what an employee falls in here. He's not -- he's reading the language

and he's going to tell you which employee provided that investment advice. He's not going to tell you what this contract means. So --

MR. MORRIS: He -- with all due respect, Your Honor. That's exactly what he's doing. Because now he's saying that even though people who were dual employees were providing these services, Highland's entitled to no compensation because they just were providing the services under the shared services agreement. He can't do that.

MR. RUKAVINA: That's not what I'm asking. That's not what -- and Your Honor will decide these contracts as a matter of law. I'm asking for him -- for his understanding of what human being that provided services, for that human being, whether that human being would fall under the payroll reimbursement agreement or the shared services agreement.

And all he has to do is to read simple English and then he'll tell you as a question of fact what he thinks. And you'll decide as a question of law if that's correct.

MR. MORRIS: I'm just going to try one more time.

MR. RUKAVINA: It's a --

MR. MORRIS: It's not fair because the example that I'm going to give and we saw six different exhibits yesterday, where people's titles changed in order to give them the responsibility for doing exactly this service. And they're now going to take the position that because they were in the legal

department and they paid for legal services that's it. We get nothing more. We're providing the exact same service. This is an argument he can make in closing, but he can't use a witness to do this.

THE COURT: All right. I sustain. He can't testify about what terms of the agreement mean.

BY MR. MORRIS:

Q Okay, so let's talk about shared services a little bit.

You heard Mr. Powell testify and you've heard a lot of people testify. Are the Advisors complaining to this Court that they did not get the services contracted for under the shared services agreements?

A Generally, no, with the exception of legal compliant services.

Q Are the Advisors complaining that they did not get the employees that they were paying for under the payroll reimbursement agreements?

A Yes. We're -- we're -- we're saying we're reimbursing for employees that were no longer there and we were not receiving the services that were being paid for.

Q So we looked at a lot of those board minutes, meetings, and you've heard Mr. Powell, he said, "Can one conclude that if we say we are getting the services we contracted for, can one conclude from that, that we're somehow waiving rights under the payroll reimbursement agreements?"

MR. MORRIS: Objection, legal conclusion.

MR. RUKAVINA: It's not a legal conclusion.

THE COURT: Sustained.

BY MR. RUKAVINA:

Q Okay. So let's talk about those back- and middle-office services.

Prior to the bankruptcy, did the Advisors have their own employees who provided back and middle office services?

A Not the services that we contracted for with Highland.

Q Okay. And do your understanding, what were the services that Highland should have been providing pursuant to the shared services agreement?

A Yeah, in the shared services agreement --

MR. MORRIS: Objection. The witness has no knowledge of the contracts. I don't understand how he gets to testify as to what services we were supposed to be providing when he has no knowledge of the contract.

MR. RUKAVINA: Your Honor, the fact that he didn't negotiate the contract doesn't mean that he can't read it and apply its statements. It's the same as if the contract says I'm buying a Mercedes and he's telling you whether that car is a Mercedes or a Nissan.

He's not interpreting the contract, he's giving the Court facts in which the Court will ultimately determine whether the contract fits or not.

THE COURT: Okay. I don't -- I can read the contracts.

MR. RUKAVINA: Okay.

THE COURT: I can read the contracts. So how is this necessary?

MR. RUKAVINA: Very well.

THE COURT: Okay.

MR. RUKAVINA: One moment, Your Honor.

THE COURT: Okay.

BY MR. RUKAVINA:

Q Go to Exhibit 36, please. It's in the big binders.

A 36?

Q Yes, sir.

A Uh-huh.

Q So this is to Mary Irving. Are you familiar with a Mary Irving?

A I know who she is, yes.

Q Okay. Does she provide any services in any capacity to the Advisors?

MR. MORRIS: Objection. Just time frame.

THE COURT: Object -- I'm sorry. Objection, time frame?

MR. MORRIS: Yeah, the question was just vague because as -- as of time frame.

THE COURT: Okay.

MR. MORRIS: He just said does she provide.

THE COURT: If you could be more specific, Mr. Rukavina?

MR. RUKAVINA: I will.

BY MR. RUKAVINA:

Q Did Mary Irving ever provide any services to the Advisors?

A I had very little interaction with her.

Q Okay.

A Over the last decade.

Q Okay. Mary Irving, we can look at it, but she's not on the payroll reimbursement agreements.

A She's not.

Q Okay.

A She's part of the legal team.

Q Did Mary Irving ever provide front-office or investment advice services to the Advisors?

A Not that I'm aware of.

Q Okay. Let's go look at 37. Are you familiar with Stephanie Vitialo (phonetic)?

A I am.

Q Did Ms. Vitialo ever provide any services to the Advisors?

A She provided some legal services.

Q Okay. Is she on the payroll reimbursement agreements?

A She's not.

Q Does she provide any so-called front-office or investment

advice -- advisory services?
A Over what time frame?
Q At any point -- well, post-petition.
A None that I'm aware of.
Q Okay. Exhibit 38. Are you familiar with Matthew Diorio (phonetic)?
A I am.
Q Is he on Exhibit A to the payroll reimbursement agreements?
A He is not.
Q Okay. Did he ever provide any services at any point in time to the Advisors?
A Not that I'm aware of.
Q Okay. Do you know what Mr. Diorio did at Highland?
A He worked on the Legal and Compliance Team. I don't think he's an attorney. Something with business development, which I never interacted with Matthew.
Q Did he ever provide any investment advisory or front-office services to the Advisors?
A Not that I'm aware of.
Q Post petition?
A Not that I'm aware of.
Q Would you be aware of that post petition, since you're the head of Business Development?
A Well, I frequently interact with the investment

professionals. I sit in on investment committee meetings. And then the weekly global investment committee meeting. As part of my role as Chief Product Strategist, I'm a liaison between investors and the investment team. And so I interacted daily with investment professionals to determine what they're doing, why they're doing it. So --

Q So you wouldn't --

A -- I'm not going to say I would have knowledge of every single person providing investment services. But I generally had an idea particularly related to our advisors.

Q Okay. Well, that's all I'm asking about our advisors.

A Yeah, I --

Q The next one, Exhibit 39, Mr. Leventon. I think we all know Mr. Leventon. But just for the record, Mr. Leventon, is he on the payroll reimbursement agreements?

A He's not.

Q And what kind of services, or what did he do at Highland?

A He was an attorney.

Q Okay.

A Worked on litigation and other legal things.

Q Did he ever, to your understanding provide any front-office or advisory services to the Advisors?

A Not that I'm aware of.

Q Okay. So we've just gone -- well, let's do Exhibit 42. With Timothy -- how do you pronounce that? Canorlier

(phonetic)?
A I wish I knew. Canorlier -- I've never been able to pronounce it.
MR. MORRIS: Canorlier.
THE WITNESS: Canorlier, yes. I know I've heard it many times.
MR. RUKAVINA:
Q Was Mr. Canorlier on the payroll reimbursement agreements?
A He's not.
Q Okay. Do you know what he did at Highland?
A He -- he was an attorney on the legal team.
Q Did he ever provide any investment advisory or front-office services to the Advisors post petition?
A Not that I'm aware of.
Q Okay. So if there's an argument made -- I think we've gone through five or six employees, if there's an argument made that these five or six employees replaced dual employees that were dropped over time, would you agree with that argument?
A I wouldn't have any basis to agree with that. I -- I don't have -- I didn't have interaction with them providing those services.
Q Because, again, we looked at the contract, and the contract has two elements. Correct?
A That's right. They need to be dual employees and they need to be providing advice to registered investment companies.

Q Okay. Now some of these employees, if they provided services to the Advisors, would that have been pursuant to the shared services agreements? Like legal?

MR. MORRIS: Objection. Same -- exact same. He shouldn't be telling the Court what contract people were providing services pursuant to.

THE COURT: Response?

MR. RUKAVINA: I'll move on.

THE COURT: Okay.

BY MR. RUKAVINA:

Q The list of employees on Exhibit A on the payroll agreements, do you have any understanding as to whether any of those employees, once they were terminated by Highland, were replaced by Highland, with respect to their roles for the Advisors?

A I --

Q I think you might have mentioned one earlier. I don't know if you put it in the record, the name. It's in the small binder, Dustin. The smaller binder to your right.

A Oh, yes.

Q Just Exhibit A.

A So I know there was one individual who was hired to help with healthcare, but he helped with the private equity fund, that wasn't related to our Advisors in HCMLP owned fund. And he did a little bit for our Advisors. His name was Michael

Jueng (phonetic). And I think he was hired in 2019. So he was the only front-office person that I'm aware of that -- that was hired.

Now, yet, there -- when some left there was, you know, some reallocation of duties. However, at that point, as I mentioned our assets in credit and private equity had been diminishing significantly over the last several years. So many of these people left, but they had seen the writing on the wall. Right.

They knew we weren't focused on credit. They knew we had growth in real estate and that wasn't their expertise. And you know, they're a lot of good people and they went and started other businesses. They went to other companies.

Q Would you have offered them employment for the Advisors upon them leaving Highland, had the Advisors a need for them?

A If we had a need, I -- we made an offer to those that -- and there were some even that were left to us, we didn't extend an offer to, for various reasons.

Q Okay.

A We didn't need them. You know, and -- and at this point our assets are very different. We don't need the large credit team.

MR. RUKAVINA: Your Honor, I think the clock is one hour off, but that's no big deal.

THE COURT: It's two minutes to 4:00. I don't know

what that says.

MR. RUKAVINA: It says two minutes to 3:00. Mr. Berdman (phonetic) if you'll please put Exhibit CC up? Your Honor, CC is an Excel spreadsheet. This is the underlying data that rolls up into the David Klos December chart, if you recall.

THE COURT: Okay.

MR. RUKAVINA: So Your Honor will recall that Exhibit Q. Exhibit Q is the PDF of the summary.

THE COURT: Okay.

MR. RUKAVINA: And Exhibit CC, the way we look at Exhibit CC is unfortunately on the -- on the screen.

THE COURT: Okay.

MR. RUKAVINA: So that's what Mr. Berdman is trying to pull up. He says it's loading. And Mr. Berdman, if you'll go to the employee listing.

Your Honor, one moment. So Your Honor, we're just trying to figure out why the screen is so blurry here. So can you see Mr. Norris, or is it --

THE WITNESS: I can see it.

MR. RUKAVINA: -- again my eyes.

BY MR. RUKAVINA:

Q Okay, so this is Mr. Klos's analysis. And I'd just like to talk about some of these employees here. So let's look at Chris Rice (phonetic).

A Yes.
Q See 2019 hired. Do you see that?
A I do.
Q Did Chris Rice provide so-called front-office investment office services to the Advisors?
A No. He's in the accounting department.
Q Okay.
A As it says there accounting, finance and back office.
Q So rather than me go through each one of these, you just go through them and tell the Court -- so start at line, what is that, 60?
A Uh-huh.
Q And go down. Those are the new hires that Mr. Klos included. Tell the Court, for each one of those, whether they would or would not be providing investment services front-office services to the Advisors.
A Yeah, Chris Rice, no. It's accounting and back-office services.
Q Joey?
A No, it was accounting and finance --
Q Just say yes or no. Just say yes or no.
A Yeah. No, no on Kelly. Michael Young, yes. Brad McKay, no. Andrew, no. Brendan, no. Tina, no. Bridget, no. Sarah, no. Michael, no. Austin, no. Erberto (phonetic), no.
MR. RUKAVINA: Okay. You can close that, Mr. Berman

(phonetic).
BY MR. RUKAVINA:
Q So if Mr. Klos used those employees as far as the profitability of the payroll reimbursement agreements in his analysis, would you disagree that those employees should have been included?
MR. MORRIS: Objection to the extent it calls for legal conclusion.
THE COURT: Overruled.
THE WITNESS: So if he -- say it one more time. If he included in the payroll reimbursement --
BY MR. RUKAVINA:
Q Yeah.
A With Michael, or a percentage allocation, I wouldn't necessarily disagree. The others I would disagree because they would be captured as a back-office employee that was not duly employed in providing investment advice to our registered investment --
Q Okay.
A -- companies.
Q And I think we've discussed this before, and Mr. Morris asked you. But you were generally aware, more or less contemporaneously with when certain employees left Highland. Is that accurate?
A I was.

Q Okay. So why didn't you or someone else immediately pound the table and say we've got to stop paying for that employee?
A Well, I had no knowledge that we were continuing to pay or reimburse for their bonuses, comp, and benefits when they were no longer employed. Had I know that, I would have reacted the same way when I found that out.
Q What did you think -- pardon me, I'm having a hard time phrasing this.

Who did you think should have been doing that job? Or as an officer of the Advisors, who did you expect would be doing that job?
A Yeah, so we -- we outsourced agreement review, payments, payment processing to Highland and they -- they actually had a very robust process. And it was actually challenging to get agreements through them, and invoices. If there wasn't an agreement tied to an invoice, they would ask for the agreement. If the agreement didn't match the invoice, they would let us know.

And they would go back and either tell the vendor or renegotiate. So there was a very thorough process that I had dealt with for a decade with them. And -- and that's who we relied on to administer our agreements and payments across the board.
Q Okay. Now before we flip to your damages --
A And I don't know if it's helpful. There was an accounts

payable person. There was a corporate accounting team --
Q Whose --
A -- who handled this.
Q -- whose employee was accounts payable?
A Who was the employee?
Q No, whose --
A It was Highland Capital Management, L.P.
Q And everyone else that you mentioned?
A And all the other corporate accounts, or HCMLP.
Q So let's look at Exhibit G.

MR. RUKAVINA: Your Honor, Exhibit G, I don't think we've looked at yet, at least not in detail. Exhibit G is a PDF printout of Mr. Norris's damages calculation. And Exhibit H is, again, the native form Excel spreadsheet.

BY MR. RUKAVINA:
Q Mr. Norris, will you please tell us if you need the native file pulled up for any reason, okay?
A Okay.
Q What -- tell the Court what you're trying to do here in Exhibit G?
A Yeah.

So what I do is very simple. I know there's a lot of numbers on the page, but just to simplify it is I took what are the actual payments made, which we have heard --
Q Payments made from whom to whom?

A Payments made by Highland on our behalf to HCMLP from our Advisor accounts for --

Q So, so, so just hold on.

A Yeah.

Q So payments from the Advisors to Highland.

A My Advisors to Highland.

Q Only that Highland was processing the advisor.

A That’s correct.

Q Okay.

A Regarding the payroll reimbursement agreements. So there was each month $252,000 for NexPoint Advisors and $416,000 for Highland Capital Management Advisors, Fund Advisors, that was paid each month. And we’ve heard all about how those amounts, the actual payments didn’t change. And so, that $9 million represents the period from the court filing to the end of November. Nine million dollars is what was actually paid.

Q Why did you stop at the end of November?

A Because that’s when payments stopped as we heard from Frank and Mr. Dondero.

Q Okay. So the $9 million, 9 million 18, that’s just the cumulative of HCMFA and NPA. Right?

A That’s correct.

Q Okay. The next line is cost of dual employees --

A That’s right.

Q -- as stated in the original agreement from 2018.

A That's right. So here's the simple math. I took the total compensation numbers which came from Highland and combined and multiplied them going month by month. I took each employee that was still employed. I utilized their termination dates from the filings as well as the monthly -- compared to the monthly termination sheet. So I went month by month and said who was still employed, multiplied their total compensation times the percentage allocation, and that's where it's broken out between NexPoint Advisors and HCMFA.

So, assuming these employees were still employed and providing investment advisory services and a new employee, the $2.8 million during that period is what we would have reimbursed, actual costs of those employees, actual reimbursement costs.

Q Okay. So just so we're clear, we saw from Mr. Klos yesterday that his analysis was a snapshot point and time December 2020. Correct?

A Correct.

Q Is yours also a snapshot of a given point and time?

A It's not. The allocation percentages are because in the beginning --

Q So I was going to -- I was going to ask you that. Which allocation percentages did you use?

A I used the ones from scheduling.

Q Why?

A There was obviously a lot of thought. It was at that point -- I didn't want to make assumptions here. Right? I'm taking the math that was provided on Schedule A. And then looking at them, you know, they appeared reasonable or should have been lower. To be conservative, I took the exact same percentages and ran them through the calculation.

Q Okay. Now just so that the Court is understanding this, if an employee is no longer there, does his or her allocated percentage matter?

A It doesn't.

Q It only matters --

A If there is -- if it's 100 percent of 0, it's 0. So that's why, yeah, it doesn't matter.

Q So for 20 of the 25 employees, would it matter what allocated percentage they had?

A Allocated percentages doesn't matter. Compensation doesn't matter. And you'll see in my second tab that that is NA. I didn't even need to put their compensation numbers because if they weren't employed as of the bankruptcy filing, they didn't matter.

Q Because we're paying for someone that doesn't exist.

A Or reimbursing for some compensation that was never paid.

Q Just so again the Court is clear, we're talking about the snapshot. You did a walk forward on a post petition month by month basis?

A Correct. And I divided that into three segments.
Q Well, let me pause you there.
A Yeah.
Q So if there was an employee that was employed some point and time post petition, but then fell off, how did you treat that employee?
A Yeah. So the month -- I had them the month that they stayed. The month later, I dropped them off. And you can see that on the third and fourth pages. I can draw your attention to, for example, John Poglich (phonetic), simple on the third page. John Poglich, you see a monthly allocation and --
Q On 53,066?
A On 53,000. And the first month is half of that because the petition date or the bankruptcy filing date was the 15th of October, I believe. And then he was here through September and he drops off. Right? You wouldn't expect to be paying for someone that's no longer there. And you can see that through various other employees. Mr. Dondero, I kept him on there. He was a -- he was there until he became a non-paid employee of Highland. You see Morrow (phonetic), Stall Tarry (phonetic). Same thing. He was employed until December 2020, and then he drops off. Same thing, Mr. Parker, until February 2020, and he drops off. And in all these with zeroes, they just were not employed on the bankruptcy filing date and so they're zeroes.
Q So what is your conclusion from the petition date through

the date that we stopped paying as to how much we paid, or rather, reimbursed Highland for employees who were no longer there?

A The difference is the $6.2 million right here.

Q So that's even a little less than Mr. Klos' 6.6, isn't it?

A It is.

Q Okay. Now, what about the next block there? You say additional two months billed by HCMLP, et cetera, for December '20 through January '21. Why did you include those additional two months?

A I included those because the services should -- the agreements had not been terminated, right. So we were paying. And I broke them out separately because the Advisors were no longer paying. And so this can't be -- this first line isn't total amount reimbursed or paid. It's what the billings were. And they're -- I think in their damages claim is that the amount is equal to the amount listed in the agreement for those two months, which I put in that top line. That's simply the amount the --

Q So the top line, the 1336, where are we paying according to their damages, that's how much we would have paid?

A I believe so. It's $252,000 a month for NexPoint Advisors and $416,000 a month for NPA.

Q And according to your calculation for those months at that point and time, how much should we have paid if the Court

accepts our view of this case?
A $264,000 should have been what we paid with a million dollar difference for that two months.
Q So if the Court agrees with us, then the damages just on these two contracts, not shared services, for those two months should be how much? How much should we have to pay for those two months if the Court agrees with our theory of the case?
A Two hundred and sixty-four thousand dollars, nine eighty-eight based on this calculation.
Q And you mentioned that the payroll termination agreements weren't terminated. Did you ever discuss that with Mr. Klos or Waterhouse or Seery?
A I did.
Q What did they tell you?
A We had an email exchange with Mr. Klos and Mr. Waterhouse and they didn't know. This is like when we found out and Mr. --
Q So let's go back.
A Uh-huh.
Q November 30th we get termination notices, 60-day clock ticking on the search services. Right?
A Correct.
Q Did we get termination notices for payroll reimbursement?
A We did not.
Q Did that surprise you or?

A It did.
Q What did it cause you to do?
A It caused us to ask why because we knew we were --
Q Well, what was the ultimate answer that you got from either Mr. Klos, Waterhouse, or Seery?
A Mr. Waterhouse said maybe it was overlooked. That's all we got.
Q Okay. No discussion about that why would we terminate if it's still profitable?
A Well, I was --

MR. MORRIS: Your Honor, that's the kind of leading question that he used to -- he asked him the question, he got an answer, and now he's fishing for the answer he wants by suggesting the answer in his question. Exactly what he took me to task for.

THE COURT: Sustained.

BY MR. RUKAVINA:
Q Did you ever discuss the profitability or lack thereof of the payroll reimbursement agreements with Mr. Klos?
A The profitability of them, yes.
Q Yes. What did you discuss with Mr. Klos?
A Yeah. So, and maybe I should back up to that November 30th date we received the notices. December 1st, I had been, along with Mr. Sauter, tasked with transitioning the services, even prior to that, making sure there was a smooth transition.

But at that point there was still the understanding or hope that things would come to a peaceful resolution.

At that point we knew, all right, we need to make sure the businesses can continue, that we can continue the shared services through another entity or hiring those employees. What agreements were there that we needed? And so the shared services and payroll reimbursement agreements were two of those. D.C. Sauter and I had been discussing them over the previous month or two, but then when this happened, we went to Dave Klos and Frank and said -- I sent Dave Klos an email and said, hey, I need to understand these amounts. What are we paying? What are we paying for?

And there was a response from Mr. Klos and that email was -- went through with Mr. Klos where I said, you know, hey, what are these the proper amounts? He came back. Maybe we can go through the email, but his response was that they had continued to pay the same amounts. And I had pointed out several employees that were large dollar amounts that were no longer employed and was asking, are we still paying for these or reimbursing these employees that are no longer employed? And his answer is the amounts had not changed.

And so after that conversation, we had a call with Mr. Klos and Mr. Waterhouse and we dug into the why, the how much, the profitability. Mr. Waterhouse was very aware that we were overpaying, used the word overpayment. That’s when I learned

about the automatic stay. I think I discussed that. Mr. Klos had -- was involved in that discussion as well. So we had a couple of discussions. Mr. Klos called me separately. We had another conversation with Mr. Waterhouse. That was in early December. I don't know if you want me to keep going on that, but.

Q Sure. Yes. What other discussions did you have with Mr. Klos about the problem?

A Yeah. So at that time too, I asked Mr. Klos and Mr. Waterhouse. They told me there was a schedule that laid out the payments and the overpayments. And me and Mr. Sauter asked for it. We said, give it to us. And I learned a little bit more about the hesitancy that they had in doing anything that would harm or cause damage to the Debtor.

Q Did Mr. Klos tell you anything about that in particular?

A Mr. Klos and Mr. Waterhouse both did.

Q What did they say?

A They had said, and this is the first I had learned about it, that they had been warned that if they did anything that was -- that would harm or be adverse to the Debtor that they would be fired on the spot, and that they would be held personally liable. And they were -- I mean, they were trying to do what was right in both regards, right. We know Mr. Waterhouse was wearing two hats, but -- and they expressed their concern. And so --

Q So their concerned about being fired?
A Fired on the spot and held personally liable.
Q Did they share -- did they share that analysis you mentioned with you?
A So Mr. Klos said, I'll check, but I don't think Seery will allow it.
Q Okay.
A So fast forward, we ask multiple times to Frank and Dave. We never got it. In mid December, it's an important time period, Jim got hit with a temporary restraining order. And so as we were starting to have these conversations with Dave and Frank, now all the sudden, you know, I for the first time was involved in the court. That was the first time I ever appeared in court. We had this restraining order for Jim. And so we were all very cautious about what we could and couldn't say to any employees. And so this negotiating or discussion we had had with Dave and Frank kind of paused for several weeks and the discussions then just went with counsel. Fast forward to around January 13th or so, maybe 12th.
Q Of 2021?
A Of 2021. Dave Klos, Frank Waterhouse, JP Sivvy (phonetic), and Brian Collins called me and said, Mr. Seery has allowed us to talk to you about the transition of services because both sides --
Q Who was JP Sivvy?

A JP Sivvy was part of the legal team at HCMLP.
Q And who was Mr. Collins?
A Mr. Collins is HR, was a HR director at -- so he chose -- and up to that point, we had -- I, in particular, I didn't want to get involved in a restraining order. So very little discussion, especially around this. So only around funds, operations.
Q And just again so the Court understands, what were you trying to discuss or negotiate at that point and time?
A Yeah. Starting January 13th was let's divide the agreements. Let's divide the services. Let's have a peaceful transition. We were receiving a number of back-office functions that were critical to our business. And so, you know, we also had dated information stored on their systems, on their servers. We were in their office still.
Q So as part of these -- and the Court may remember. We had an emergency trial on a mandatory injunction February 16th or something like that. Ultimately, was there a transition of services done?
A We had the permanent injunction. Ultimately, the shared services agreements ended. They were extended. Highland worked with us for an extension of around three weeks.
Q But that's my question.
A Yeah.
Q As of what -- as of actually what period of time, what

day? How do I put this? As of what day were the shared services agreements actually terminated to your understanding after these extensions?

A Yeah. I believe it was February 20th.

Q Okay.

A Maybe 19th.

Q February 28th or 20th?

A Twentieth.

Q Twentieth.

A And the employees were terminated on the 28th of February. And there was a difference and they moved the date of termination of employees back a week --

Q And then --

A -- beyond each of our termination dates, so we had this issue.

Q What happened? What happened to the employee? I mean, did the Advisors do anything with the employees that were terminated?

A So we hired a few of the actual terminated employees and then most of them went to Skyview Group, which had a different name at the time, which we entered into shared services agreements for those, with those entities.

Q So during those extensions that we discussed did the Advisors pay the debtor for those extensions in January and February 2021?

A We did. And that's that third box here, the third section of the damages. It's $453,286 is what was paid for the payroll reimbursement. And that's just the -- it was based on the exact dollar amounts and --

Q Why did we pay the exact dollar amounts if we knew that we were overpaying?

A Yeah.

So we had discussions on this. And backing up to the first extension, my conversations with this group of four Highland employees starting January 13th was let's work together. Let's get a real -- let's get a great solution. We don't want any disruption in the business.

To that point, no one had talked to me about you need to pay these past due amounts or the amounts that they were claiming we owed until January 28th. I got an email that said, these amounts are -- all these, Highland or NexPoint and HCMFA related entities or Jim-related entities, some were -- I had no relationship to -- will need to be paid.

And at this point we had already negotiated and agreed on most of the material terms related to the transition of services. And so we were waiting on a term sheet at that point. And they said, these have to be paid or we're pulling the plug on everything you have. And so then I had a call with JP Sivvy, Frank Waterhouse, and Dave Klos.

Again, I reiterated this, you know, asking for the

schedules related to the payroll reimbursement agreements. But at that point in time, they gave us an ultimatum of you're going to pay the extension fee or you're going to have the plug pulled on you. And at that point, we weren't ready for that. And so we said we're going to -- we will pay it, but we'll reserve all our rights.

Q And did Highland agree to that?

A They did.

Q Okay.

A And we put the -- that in our actual signed agreement. And when we did -- made our second extension, had multiple conversations, same thing. We would reserve our rights.

Q And just an order of magnitude, how much did we pay Highland for those two extensions, just ballpark?

A The payroll reimbursement agreement amount was $453,000. The shared services was maybe $2-, or $300,000, so $7-, or $800,000 for 20 days.

Q Okay. So --

A I may not be perfect on my math, but that's --

Q So if the Court agrees with our theory of the case, how much are we saying we should get back from those extension fees we paid Highland there in February 2021?

A Yeah. So related to the payroll reimbursement agreements, it's $453,286, is what was paid. If you take the same calculation I had been doing on all the other months, $81,000

is the appropriate, the actual employees that were employed providing advisory services, so that the difference is $372,000. That's the overpayment amount.

Q So you mentioned that Mr. Klos used a word overpayment when having the discussions with you. Is that correct?

A Well, I know that was a word that Frank Waterhouse used.

Q Okay.

A Dave may have, but he frequently used it as you were paying for employees that were no longer employed or reimbursing for employees that were no longer employed.

Q So Mr. Klos said you were reimbursing for employees you no longer had?

A Again, I don't remember the specific wording, but it was very clear that the payments were more than what we were contractually obligated.

Q Did he say it to you more than once?

A He did.

Q Did Mr. Waterhouse say it to you more than once?

A He did.

Q Did any other employee or agent of Highland ever say that to you?

A Yes.

Q Who?

A On a call with JP Sivvy and Frank Waterhouse and Dave Klos. JP Sivvy also acknowledged it.

Q Okay. Anyone else?
A I had conversations with Fred Caruso where we -- I brought this up in January and asked for the schedule, what we were paying. He said, I know what you're talking about, but let me check on it. He did acknowledge. Same thing in early February with Mr. Sharp, Bradley Sharp. We brought up the discussion. There were attorneys on the line as well. We had a phone call. I asked for the schedule. He said -- I told him we knew that we were paying for employees that were no longer there.

There had been an analysis provided. We've asked for it on multiple occasions. And he said, I'll check. I don't know that we can provide that. And I said, I'm not asking. I'm not asking for something unreasonable. We're asking to pay for the employees that are currently here. And he said, well, I'm -- you know, I'm a representative of the Debtor and we have an obligation to the Debtor.

Q And when you said schedule, were you referring to the David Klos analysis?
A Well, I don't know if it was that. I didn't see this analysis from Dave Klos, the ones that have been in the Court, until discovery. We had been asking for it. I didn't see it until February. Actually, I think after my deposition. We saw the main schedule. We hadn't received the Excel files. And so I'm assuming because Dave and Frank had told me there had been calculations, I'm connecting an assumption here that that is

the schedule, but I don't know. I don't know if they had another one. They didn't provide it.

Q Is that something we requested in discovery?

A It is.

Q So if they didn't provide it, can we conclude that there is no other one?

MR. MORRIS: Objection to the form of the question. I mean, this is just -- this is -- you can't -- I object. It is not -- it's complete speculation. How about that?

MR. RUKAVINA: Well, let me rephrase the question.

THE COURT: Sustained. Uh-huh.

BY MR. RUKAVINA:

Q We requested all internal calculations of profitability. Correct?

A We did.

Q And did we receive from the Debtor anything other than Mr. Klos' December 2020 and December 2019 analysis?

A We did not.

Q Okay. Well, and I'm sorry. There were two in late 2019, so let me just clarify. I think there --

A There were two iterations.

Q Two iterations. So --

A I think I only saw one of them, but yeah.

Q So technically we might have gotten three, but they would have been the ones from December 2019 and December 2020?

A Correct.
Q Okay. Now let's -- let me just ask you something while we are still on your Exhibit G. So, at the end of the day there were only a handful of the original employees left from Exhibit A. Correct?
A Correct.
Q Now what would happen to your damages model if instead of using the original percentage allocations you bumped it to 100 percent such that 100 percent of those five employees would be reimbursed by their Advisors? What's the resulting number?
A Yeah. So using these existing plays, I actually plugged this in at 100 percent and it's, I believe, approximately $4.4 million would still be the damages.
Q So --
A Applying 100 percent of their time.
Q So if the Court agrees with our theory of the case but says that we should have done a separate analysis of the allocated percentages, even if we bumped that up to 100 instead of 18 percent of 42 percent or whatever, it still results in how much in damages? Overpayments.
A $4.4 million.
Q Okay.
A Approximately.
Q If you'll flip to Exhibit P, please, as in Paul. Is this the email exchange that you just referenced with Mr. Klos where

you were asking for data and et cetera, et cetera?
A Yes.
Q Okay. And in the bottom email there where he's writing to you on December 1st at 9:12 a.m. he says that given the changes in head count and along with not paying insider bonus compensation, that has increased the profitability of the contracts. Do you see that?
A I do.
Q Did you ever separately from this discuss the profitability of the contracts with Mr. Klos other than your communications that there were -- we were paying for employees we didn't have?
A We had a phone call with just he and I. We had a phone call with he and Frank, multiple discussions, again in January as we were talking about transition of services, discussed it again on a call with the group at the end of January, so there were multiple conversations.
Q Okay. Did the Debtor ever terminate, to your understanding, the payroll reimbursement agreements?
A Yes, I believe so.
Q And was -- why do you -- did you do anything, to your memory, to prod the Debtor to do so?
A Yes.
Q What did you do?
A So we asked DC Sauter and our team work with their legal

team, hey, is this going to be -- we wanted to ensure that we weren't continuing to overpay for employees that were no longer there. And so DC, as a condition of signing, I believe signing the transition services agreement, they made us terminate the -- we asked them to terminate the payroll reimbursement agreement.

Q So we didn't terminate the payroll reimbursement agreements. The Debtor did.

A I believe so, yeah.

Q Okay.

A Yeah.

Q Because we require that as a condition.

A Yes.

Q Okay. Other than that, were you aware of any attempts by the Debtor to terminate the payroll reimbursement agreements?

A I'm not.

Q Okay. Can you think of any reason why the Debtor wouldn't have done that?

A Yes.

Q What?

MR. MORRIS: Objection, Your Honor. He can't speculate as to the Debtor's motivations here.

THE COURT: Speculation. Response?

MR. RUKAVINA: I'll withdraw the question.

THE COURT: Okay.

BY MR. RUKAVINA:
Q And just to clarify what Mr. Morris was asking you, did Mr. Klos use the word true up when he described what happened at the end of 2018?
A He did.
Q Did he tell you whether money changed hands as a result of that “true up”?
A He did.
Q What do you remember about that?
A He said there had been a -- I don’t remember if it was small or immaterial -- it wasn’t immaterial, but a small -- a payment actually resulted in paying to Highland from both Advisors.
Q Okay. Did -- and you mentioned that he didn’t --
A And actually, I don’t think he said he both Advisors. He said the Advisors, but didn’t specify how much of each.
Q But did he actually tell you about the fact of the amendments?
A No.
Q So just the result.
A Yes.
Q Okay. Did Mr. Klos ever -- first of all, do you have an opinion on Mr. Klos’ -- prior to this litigation, Mr. Klos’ ethics and professionalism?
A I do. Yeah.

Q And what was your opinion?
A I thought highly of him. I worked with him for over a decade. His work product was always fantastic. He was thorough. I went to him for a lot. I trusted he would put out an accurate and honest analysis. He worked closely on board matters, fund matters, advisor matters, and yeah, I thought highly of him.
Q And he was trusted enough to be presented to the retail board?
A Absolutely.
Q Did Mr. Klos, in all of your discussions, ever tell you anything like, geez, Dustin, there's something fishy about these payroll reimbursement agreements or amendments or shared services agreements?
A The way he went about it, he was concerned, right. And the way he prefaced our conversations was with concern.
Q How so?
A He said we're being -- he didn't say threatened, warned, almost daily that we can't do anything to damage or provide something that would hurt the Debtor. And so, yeah. He basically was like kind of you're on your own in figuring out, but I -- he knew the numbers.
Q I don't think you understood my question. Did Mr. Klos ever tell you that there was -- did he ever flag for you any of the issues? Well, strike that. Were you here when Mr. Klos

testified yesterday?
A I was.
Q And he testified as to what he thought the $2.5 million number came from and other things. Remember that?
A Uh-huh.
Q Did he ever tell you anything like that before?
A No.
Q Did he ever tell you anything -- that there was anything potentially deceptive or suspicious about the payroll reimbursement agreements?
A Got it. No.
Q Did he ever tell you anything, that there was anything suspicious or deceptive about the amendments to the payroll agreements?
A No.
Q What about the shared services agreements?
A No.
Q What about potential tax -- I don't want to use the word fraud because I'm not a tax lawyer -- potential tax shenanigans?
A No.
Q Potential Mr. Dondero trying to get tax questions for himself?
A No, he didn't.
Q Potential that these were used as a method of financing

how --
A No.
Q That the payroll reimbursement agreements were intended to be monthly fees regardless of actual cost?
A No.
Q Let's go to Exhibit OO real quick. We're almost done. And I really -- I really need to go to the optometrist.
Do you know what Exhibit AA is? There's a bunch of individual ones.
A Yes.
Q Okay. What are these?
A These are the shared services invoices that, as required by the shared services agreement for Highland Capital Management Fund Advisors are to be provided, as this is a cost plus 5 percent agreement. So they're laying out, if you look in column, the number column 1, it has --
Q Well, let me pause you.
A Yeah.
Q Just so that the Court follows. We've heard before that --
A Yeah.
Q -- under certain services NexPoint paid a different methodology than HCMFA. Right?
A They did.
Q NexPoint was just a flat monthly fee. Right?

A Correct.
Q And HCMFA was a bit of a work up.
A Cost plus 5 percent.
Q So who prepared these invoices on Exhibit AA?
A Highland, Highland's accounting back-office group.
Q And would they then send us these invoices?
A I didn't see these invoices until discovery.
Q Okay. You heard Mr. Morris talk about how -- how it was only $10,000 a month for legal. Did you hear that?
A I did.
Q You see there it says legal, $10,000. Right?
MR. MORRIS: Excuse me, Your Honor. I didn't testify to that. Mr. Klos did.
MR. RUKAVINA: Well, I apologize. I just remember someone talk -- I apologize, Mr. Morris.
BY MR. RUKAVINA:
Q You heard something about that yesterday. Right?
A I did.
Q Okay. Is that the whole picture?
A It's not.
Q Why not?
A When you peel back to what is underlying these numbers, $10,000 was a standard legal services. However, in the compliance bucket, it says general compliance. If you look to the schedules, that includes Thomas Surgent, an attorney,

including his base and bonus and benefits and Lauren Thedford, who is an attorney, providing officer and other functions for us. So that $92,000 a month -- this is a monthly invoice -- includes those two adjacent posts, which is two out of the three attorneys.

Q What about retail operations and finance and accounting?

A Retail operations and finance and accounting includes -- it doesn't include attorneys. It includes back-office accountants. Frank Waterhouse, I assume did Klos. We have -- we have the Excel spreadsheets that break it out --

Q We do.

A -- by individual, but --

Q But can you tell me how it is that Highland could calculate and bill us for the services of these employees if Mr. Klos testified correctly yesterday that there is no way in the world to do so?

A Yeah. On a monthly basis, they would calculate the employees and the percent of time that they spent related to Highland Capital Management Fund Advisors. They had a schedule attached to that spreadsheet.

Q Yep.

A Which then detailed their total comp, salary, bonus, taxes. There's several columns. And their percentage allocation. That was updated monthly. I looked at the schedules they provided in discovery and they -- when there was

a new employee added, they would add that employee. When an employee left, they would take the employee away.

Q And the --

A There was approximately 20 people underlying --

Q And we paid --

A -- this schedule.

Q And we paid these invoices, well, other than late in the game. Right?

A Yes.

Q The Advisors or HCMFA paid those invoices.

A Yes. Highland submitted the payments on behalf of our Advisors.

Q Okay. So can you conclude from that that there must have been some methodology to allocate employee time per advisor?

A They managed to do it.

Q Or is it -- or is it a fraud?

MR. MORRIS: Your Honor, this is really --

MR. RUKAVINA: Is there any alternative?

MR. MORRIS: He's leading.

MR. RUKAVINA: Is there any alternative, sir?

THE COURT: Sustained.

BY MR. RUKAVINA:

Q Is there any alternative? I'll strike that, Your Honor. I'll just deal with it in closing. Thank you, Mr. Norris.

THE COURT: All right. Pass the witness. Mr.

Morris.

MR. MORRIS: I just have a few follow-up.

THE WITNESS: A few is three. Right?

MR. MORRIS: No.

THE WITNESS: Oh, okay.

MR. MORRIS: No.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You understand that we completely disagree that you -- the Advisors are entitled to any damages. Right?

You understand that that's the position that we've taken in this case. Right?

A I believe so, yes.

Q Okay. Can you turn to Exhibit G, please?

A Yes.

Q Okay. Do you see -- so you understand that we don't agree you're entitled to anything. Right?

You understand that's our position. Correct?

A If you represent that, I'll take your word for it.

Q I do. And you've got the million -- so with that understanding though, you've got the $1,336,000 for the December 20th -- December '20 and January 2021 on your chart. Do you see that?

A Yes.

Q And it's your testimony that your recollection is that the

Advisors actually paid the amounts that were due under the payroll reimbursement agreement subject to a reservation of rights in connection with the extensions?

A No. Not the January and December payments. We paid in February. Yeah.

Q Did the Advisors ever make the December and January payments?

A I don't believe so.

Q So why is that number here? Why are you suffering damages that you didn't even pay?

A Yeah.

So I think the reason for including it is it says additional two months billed. We know that we've been billed those. We're not arguing that there shouldn't be anything paid. You're saying we actually owe the full amount. Here is the amount we owe. So the difference is the million dollars, right. So you're claiming we owe you the full 1.3. We're saying it's 264.

Q But you're seeking damages for the difference. Aren't you?

MR. RUKAVINA: Your Honor, that's not -- that wasn't the testimony, you know.

MR. MORRIS: Just look at -- I'm just asking. This is math, right. It's your analysis.

MR. RUKAVINA: It says total over billing. Our

damages, Your Honor, are the $6.2 million, as he testified, and then the $372,000.

MR. MORRIS: Then how could --

THE COURT: Overruled. He can ask question about it.

BY MR. MORRIS:

Q Those two numbers don't add up to $7.6 million, do they?

A Yeah. And I don't know the legal ramifications here, but the math is you're asking for -- I can't remember the number -- three million. We're saying here is this. The three million should be offset by million dollars.

Q Sir? Sir, let's just take this one piece at a time because I --

A Uh-huh.

Q -- I just want to make sure this isn't inflated. You agree that the Advisors paid zero for December and January under the payroll reimbursement agreement. Correct?

A Well --

Q Just simple question.

A The argument I think Jim made was we've overpaid. There should be a true up to those amounts.

MR. MORRIS: I move to strike. Can you please -- I want to get this done.

BY MR. MORRIS:

Q You admit that the Advisors paid zero in December 2020 and January 2021 under the payroll reimbursement agreement.

Correct?
A We made no payments in January --
Q Okay.
A -- or December.
Q But your analysis that you did says that if you were to pay something it would be $264,998. Right?
A Correct.
Q But instead of adding that number to the $6.2 million, you added the difference between that number and what we've invoiced as the damage calculation. Is that -- that's a mistake. Right?
A We wouldn't add the 264 as additional damages.
Q So what's the damage --
A That's the amount we would have paid.
Q That's the amount. So --
A Versus what was billed. You billed us $1.336 million and --
Q Okay. So would the proper damages here be 6.206, 891. I'm just trying to do it from your perspective.
A Uh-huh.
Q Plus the $372,040 in the bottom. Right? 372? Do you agree with that? Those two were parts of your damage calculation.
A Those are part damages, correct.
Q And you would add those two together and then you would

deduct $264,000. Right?
A No.
Q Because that's the value that you should have paid that you didn't.
A I wouldn't necessarily say you'd deduct it from that. It would be offset from whatever you're seeking from us, right. That's separate.
Q No.
If you win this case, and again, right, it's an assumption that I positively don't agree with. But I you were to win this case, right, your theory is that you would be entitled to 6.2 plus $372,000, right, because that's the overpayment. And then the 264 is what you should have paid under your theory, so that should be deducted because you didn't pay it.
A Yeah. Assuming that your three million goes to zero as well or it was reduced. It's the same way at getting at the same answer.
Q Okay. Right? Because -- are we in agreement? It's if you want to know under your theory if you win under the methodology you've adopted, it would be 6.2 plus 372 minus 264. Right? Because the 264 is your valuation that you didn't pay.
A Yeah. And assuming that your numbers are also go away, that there's no -- there's no damages there.
Q I'm going to lose under this hypothetical.
A Yeah. Yeah.

Q Right? So it's not $7.6 million. Right? It's something closer to 6. Again, just using your numbers. I'm just trying to correct the mistake that I think you made.

A I don't think it's necessary a mistake. I think it's just thinking at it holistically.

Q Okay. Can you go to Exhibit 27 in Binder Number 1? And this is that email that you just looked at with Mr. Rukavina. Right?

A Correct.

Q And if we start on the right page, the one with Bates number 730, do you see that you wrote to Mr. Sauter at 7:08 p.m. on November 30th and said, time for a call?

A No. That --

Q At the bottom of the page.

A Oh, at the bottom. On October 6th, time -- it was time for a call.

Q Right. But at the bottom of Page 730, there's an email from you to Mr. Norris on November 30th at 7:08 p.m. where you're forwarding the same email.

A Yes.

Q And that's the title of the email. Right?

A Yes.

Q And you sent that because you just learned that Highland had terminated -- given notice of termination of the shared services agreements. Right?

A I believe so, but I'm not certain.
Q And then you walked into the office early the next morning and started to think about what all of this meant. Right?
A Yes.
Q And so, at 8:53 a.m., you sent an email to DC, to Frank, and to Klos about the topic of the intercompany agreements. Right?
A Yes.
Q And you gave them the amount of money that was paid under all of the agreements between the companies. Correct?
A I took from the income statement, which isn't necessarily a cash flow statement, but it's the actual amount bill or recorded as expenses.
Q So the Advisors own books and records reflected all of the payments that were made by the Advisors to Highland under the various intercompany agreements. Right?
A The HCMLP employees were the ones that prepared these very numbers.

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

THE COURT: Sustained.

BY MR. MORRIS:
Q Okay. I'll ask my question again. The Advisors books and records reflected all payments that they made to Highland on account of the intercompany agreements. Correct?
A Sorry. One more time.

Q The Advisors books and records reflect every payment they ever made to Highland under the intercompany agreements during the relevant period. Correct?
A I believe so, yes.
Q And you were able to go in there and to get the information about the amounts that were paid. Right? You got it. You got it. It's in your email. Right?
A I got it from the board materials, yes.
Q From the board materials. So even the board was given the details about the amounts that were being paid. Who gave it to the board?
A And I'd say not details, but one line, right. There's no underlying details.
Q But the board was told how much the Advisors paid under the intercompany agreements on an annualized basis. Is that fair?
A Yes.
Q And that information came form the Advisors own books and records. Correct?
A From the Highland employees, yes.
MR. MORRIS: I move to strike.
THE COURT: Sustained.
BY MR. MORRIS:
Q That information came from the Advisors books and records. Correct?

A Yes.
Q Thank you.
And you told -- you told Mr. Sauter and Mr. Waterhouse and Mr. Klos, among other things, that you need to make sure these agreements are fully understood in the context of the notices, in the context of the termination notices. Do you see that?
A I do.
Q So after you receive notice of termination, that's when you decided that you thought it was the appropriate time to make sure the agreements were fully understood in the context of HCMLP's termination notices. Right?
A That was a continuation.
If you go back in the email of October 6th, there's an email asking for a conversation on shared services and other agreements. I had an attachment with those agreements, then sent them on October 6th to DC Sauter. This is when I started to be involved more in the transition of services and was already trying to kind of understand what was going on. And there wasn't a need at that point to do anything specific.
Q Okay. So it was after? Can you just agree with me that what you wrote on the day after you found out that there was a termination notices, that you need -- that you "need to make sure these agreements are fully understood in the context of HCMLP's termination notices for the shared services agreement".

Did you see that?
A I did.
Q When you use the phrase, shared services right there, you also meant the payroll reimbursement agreement. Right?
A I may have, but I don't -- I don't know.
Q Well, that's what sub advisory fees are. Right? The column that you have there under sub advisory fees, it doesn't say payroll reimbursement agreement. It says sub advisory fees. Correct?
A It says sub advisory fees, yes.
Q And those are the amounts that were paid not under the sub advisory agreements, but the contract that is now called the payroll reimbursement agreement. Correct?
A Yes.
Q And what you wanted to do is not make sure you fully understood the shared services agreements. What you wanted to do on December 1st is make sure you fully understood the shared services agreements and the payroll reimbursement agreements. Correct?
A Worth noting the sub advisory fees were higher than the shared services fees, so need to make sure these agreements are fully understood in the -- well, here -- they only terminated the shared services agreement, so and going back my previous, I wasn't sure.
They only sent shared services agreement terminations.

And so you needed to understand the shared services agreements, the sub advisory agreements. Yeah. We wanted to understand them, but they hadn't terminated them. So this specifically was related to the shared services agreement.

Q Sir, the rest of the email train that you're relying on is about the sub advisory fees. Do you see Mr. Klos' response to you?

A Yeah.

Q It's only about sub advisory fees. Correct?

A What's only about sub advisory fees?

Q The first paragraph is about sub advisory fees.

A Yeah. Because he -- he clarified. I was learning at this point.

Q Uh-huh.

A And he clarified and then it went into a deeper discussion about the sub advisory fees.

Q And is it fair to say that you also needed to fully understand the payroll reimbursement agreements at that time?

A Absolutely. We should. Yeah.

Q At that time. Right?

A Because they didn't terminate them.

Q That's right. And you hadn't undertaken that exercise at any time before this time. Is that fair?

A Other than my discussions with outside counsel and DC Sauter that are laid out in the email below about which we had

had discussions, but we didn't dive into all the details.
Q You're telling me that back in October this email that says nothing doesn't mention payroll reimbursement agreement. Right?
A It says shared services and other agreements with HCMLP.
Q And what was the issue at that time? Did you know back in October?
A Did I know what back in October?
Q About the alleged overpayments.
A I didn't.
Q Were you looking at the agreements in October?
A We were.
Q So you had the agreement in your hand in October and you didn't make any conclusions about overpayment at that time. Right?
A I looked at the schedule and saw that there's a percentage allocation of employees and assumed that Highland is -- let me step back. We relied on Highland and were assuming that they were making payments in accordance with the agreement.
Q In the two months before you sent this email to Mr. Sauter and Mr. Waterhouse, did you make any effort to try to figure out if your assumption was accurate?
A No.
Q And you looked at Exhibit A and you said, well, there's a lot of employees who have been terminated, but I just assumed

Highland is doing the right thing.
A Yeah.
Q Okay. You said that you were not aware of the overpayments, but I believe you said Mr. Waterhouse was very aware of the overpayments. Do I have that right?
A He was.
Q And did he tell you when he first learned of the overpayments?
A Well, in our discussion in December, he said -- he didn't say when he had learned, but in our call at the end of January, which I had taken notes on, he had said -- and I was surprised by this because I thought it was newer knowledge to him in December, but he had said over a year ago he had discussions with Counsel and DSI. So he had told me it had been over a year.
Q And did -- and that's when he told you? So other than what Mr. Waterhouse told you about his conversation with Isaac Leventon, Scott Wellington, and Fred Caruso, are you aware of any other conversation that ever took place before November 30, 2020, concerning whether or not there should be any modification to the amounts being paid under the payroll reimbursement agreements?
A So I'll correct the -- you said other than him telling his conversation with Fred Caruso and Isaac. Other than their testimony, he didn't tell me that at the time. He said he had

spoke to DSI and to -- to counsel. So just --
Q Meaning that he didn't identify who the counsel was.
A He didn't identify who counsel was.
Q Fair enough.
A I didn't know who Fred Caruso was at the time.
Q Okay.
A Again, I wasn't involved. So he told me general. So that's the first part of the question, so didn't want to agree to that part by answering. So then you said was there any other discussion that they should be amended prior to November 30th. Not with me.
Q Okay. And you're not aware of any. Correct?
A Other than -- I'm not aware of any, no.
Q Thank you.
Nobody's ever told you -- other than this one conversation that Frank had with Fred Caruso and counsel, nobody has ever informed you of any discussion of any kind where the Advisors asked to modify the amounts that were being paid under the payroll reimbursement agreements. Correct?
A I mean, other than my conversations where I asked for the scheduled, demanded that they be done the right way, but you're saying that --
Q Let me rephrase the question.
A Yeah.
Q Because I want to use that November 30th timeline.

A Yeah.
Q Other than the conversation that Mr. Waterhouse told you he had with Fred Caruso and counsel, you have no knowledge of any request to modify the amounts that were charged under the payroll reimbursement agreement at any time prior to November 30, 2020. Correct?
A I don't.
Q Thank you.
You went through a whole lot of testimony with Mr. Rukavina about the change in the advisor's business model. Do I have that right?
A Correct.
Q And none of those changes ever caused the Advisors to make a request to modify the amounts that were being paid under the payroll reimbursement agreement. Correct?
A They should have. And again, Highland -- we thought Highland was doing that, but there's -- yeah. The people changed. It should have resulted in a modification.
Q Okay. And every -- it was the last question I asked and I just want to emphasize the point.
A Uh-huh.
Q Every single person that you believe should have unilaterally made this change reports to Frank Waterhouse. Right?
A Those that had knowledge of this, yes.

Q Okay.
A And you said unilaterally, I think the contract is clear and says that if either party, right, will negotiate in good faith.
MR. MORRIS: I'm going to move to strike that part because the contract speaks for itself and --
THE COURT: Sustained.
MR. MORRIS: -- you have no knowledge of what that means.
May I just have one moment, Your Honor?
THE COURT: You may.
MR. MORRIS: I have nothing further here.
THE COURT: All right. Any recross?
MR. RUKAVINA: Briefly, Your Honor.
THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. RUKAVINA:
Q Briefly because I think Mr. Morris might make his flight. Exhibit W. Is that the notes that you referenced to yourself, just so that I can use it in closing?
A Yes. Those are them.
Q Okay. And were those kept contemporaneously or right after by you?
A I started typing them up shortly after the call ended.
Q It's Exhibit W. I think it's been admitted.

A And it was sent -- the call happened that evening and I sent it later that night after I had wrapped up work. I sent it to myself.

Q Going back to your damages analysis, where did you get the dates of termination of the employees from?

A So I received them from the interrogatories.

Q So let me point you. Exhibit I. Exhibit I, Page 9. Yeah. You might not know what an interrogatory is. Exhibit I, Page 9. Your Honor, these are the Debtors' responses to my interrogatories. Do you see that, sir?

A I do.

Q Okay. Is that the source information for dates of termination?

A It is. And I also compared that to the schedule from HR at Highland Kelly Stevens.

Q And just to round off this discussion of damages, back to your Exhibit G.

A Yes.

Q We're claiming the 6.2 million. Correct? Go back to Exhibit G.

A Yes.

Q We're claiming the 372,000. Correct?

A Yes.

Q Then we're claiming -- I'll discuss it in closing -- some $1.3 million from the David Klos analysis for the shared

services agreements. Right?
A Yeah. And that's different than this 1.3. It's 1.3 in shared services.
Q That's what I wanted to clarify.
A Yes. Yes.
Q You did not --
A Additional damages.
Q You did not calculate the underlying overcharges under the shared services. We're just going with Mr. Klos' analysis --
A Going off --
Q -- if the Court agrees with us.
A That's correct.
Q And then 425,000 in cover damages.
A That's correct.
Q And that's for Robert Harris and Jason Post?
A Correct.
MR. RUKAVINA: Your Honor, thank you.
THE COURT: All right. Mr. Norris, before I excuse you, I have two or three questions.
THE WITNESS: Yes. Yes.
THE COURT: Okay. That was it. That was recross.
MR. MORRIS: Oh, I had a couple -- I have a couple of questions on that.
THE COURT: But that was it. We went you, you, you, you.

MR. MORRIS: Right. But can I cross now on the very limited testimony? It's limited to the questions that he just asked.

THE COURT: Okay. Well, don't --

MR. MORRIS: If you don't want me to, it's fine.

THE COURT: Yeah. I don't want you to.

MR. MORRIS: Okay.

EXAMINATION

BY THE COURT:

Q All right. My brain thinks in timelines. And so I just -- I want to be reminded of a couple of things. NexPoint, NPA, was formed when?

A Yeah. NexPoint Advisors was formed in 2011 or 2012. I believe it was 2011.

Q Okay. So after you started at the Highland complex. And the other one, HCMFA. It was --

A Yes.

It was formed somewhere between 2007 and 2009 as Highland Funds Asset Management. That's where Jim got the H fam from and has carried it. It then became Axis Capital. And then it changed its name again to Highland Capital Management Fund Advisors in, I believe, February 2013.

Q Okay. So when did each of these entities begin hiring their own employees? I'm not 100 percent clear. I think I heard the answer, but you tell me.

A Yeah. So they have -- they had their own employees throughout the whole time period, but --

Q Since 2011, since 2007?

A That's right. And the -- they have -- and I mentioned the shared services agreements. When I started working for Highland Capital Management Fund Advisors, there were a lot of those in house services that were actually at the Advisors.

Q Right. Yeah.

A So part of the transitioning those services was with my moving to a different role in around 2013 or so where we merged those services. We were receiving some services from Highland, back-office services, maybe some --

Q Okay. I'm more interested in front office.

A Yeah. Front-office services.

Q Uh-huh.

A So the Retail Advisors have always had front-office personnel. And we did rely and we had the payroll reimbursement agreements for certain investment professionals. Prior to the 2018 agreement, I believe the shared services agreement had investment advisory services in it.

So -- but there was -- you know, we have had investment professionals the whole time. However, as I mentioned, the shift from being real -- from credit focused to real estate focused really started in 2015, '16, '17, '18, and really into '19 and '20. So our real estate assets in 2012 or '13 were

close to zero and today it's around nine or ten billion.
Q Okay.
A And I think if you go back to 2008, it was almost primarily credit and a long-short equity fund from our advisors and a mostly credit focused funds.
THE COURT: Okay. Thank you.
THE WITNESS: Yes.
THE COURT: You're excused.
THE WITNESS: Thank you.
(Witness excused)
THE COURT: All right. That concludes our witnesses. Right?
MR. RUKAVINA: It does, Your Honor. And Mr. Morris and I discussed a proposal.
MR. MORRIS: Yeah. Let me just confer with my client --
MR. RUKAVINA: Sure. Sure.
THE COURT: Okay.
MR. MORRIS: -- to make sure my client is okay with this.
All right. You can --
MR. RUKAVINA: You're okay?
Your Honor, we were -- if agreeable to the Court since they could then make their flights and we're all tired, we can do closing by Webex at the Court's convenience rather

than go now until probably quite -- we're not going to have, I don't think, huge, long closings, but we're going to have quite some time.

THE COURT: You had an hour opening.

MR. MORRIS: Yeah. I mean, I actually --

MR. RUKAVINA: I was a lot less than an hour.

THE COURT: Okay.

MR. MORRIS: I don't want to impose my will at all. I'd like to do it consensually, but I think it might be appropriate to just set some time limits and find a day. We do have a pretty big day next week for the summary judgment motion on the Notes (phonetic) litigation.

But at the Court's convenience, I think it would be helpful to review the record because it's been a busy couple of days and I know personally I'd like to read actually the testimony instead of just telling the Court what I think witnesses testified to because people get a little loose with that sometimes.

THE COURT: Okay. So we'll let you do closing by WebEx. We'll limit you to an hour each. We'll do it some day next week, but I need to check with Traci. I don't have my final calendar for next week --

MR. RUKAVINA: MSJ is the 20th?

THE COURT: -- to know when the best day is.

MR. MORRIS: It is the 20th, yeah.

THE COURT: What day is your Note?

MR. MORRIS: I think it's the 20th. Yeah.

MR. RUKAVINA: That would be a week from today. Right?

MR. MORRIS: Yeah. You know, and it may not be feasible to do it next week. It may wait until the week after.

THE COURT: Okay.

MR. MORRIS: I'll do it whenever the Court wants, but --

THE COURT: Okay. We'll do it either next week or the following week, okay?

MR. MORRIS: Yeah. Fair enough. Fair enough.

THE COURT: Yeah. I just need to get with Traci --

MR. MORRIS: Yeah.

THE COURT: -- and see what is the best day. So she'll reach out to you tomorrow.

MR. MORRIS: Perfect.

THE COURT: And let you know.

MR. MORRIS: Perfect.

THE COURT: Okay.

MR. MORRIS: Thanks so much, Your Honor.

THE COURT: All right.

MR. RUKAVINA: So just, I guess, to be clear. Plaintiff has closed. I have closed because we did it simultaneously, and the evidence is concluded.

THE COURT: The evidence is closed.

MR. RUKAVINA: Thank you.

MR. MORRIS: Thank you.

THE COURT: I'm not listening to anything else. And the briefing is closed, as well. So we'll just have closing oral arguments again next week or the following week. Traci will reach out tomorrow.

MR. MORRIS: Okie doke.

(Proceedings concluded at 5:04 p.m.)

* * * * *

C E R T I F I C A T I O N

We, DIPTI PATEL, KAREN WATSON, MICHELLE ROGAN, PATTIE MITCHELL, and, CRYSTAL THOMAS, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL, CET-997

/s/ Crystal Thomas
CRYSTAL THOMAS, CET-654

/s/ Karen K. Watson
KAREN K. WATSON, CET-1039

/s/ Pattie Mitchell
PATTIE MITCHELL

/s/ MICHELLE ROGAN
MICHELLE ROGAN
LIBERTY TRANSCRIPTS

DATE: April 14, 2022

EXHIBIT 64

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11(SGJ)
	.	
HIGHLAND CAPITAL	.	Earle Cabell Federal Building
MANAGEMENT, L.P.,	.	1100 Commerce Street
	.	Dallas, TX 75242-1496
	.	
Debtor.	.	Monday, September 12, 2022
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484)

BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

TELEPHONIC APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript produced by a transcript service.

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INDEX

INDEX

EXHIBITS

(Proceedings commenced at 9:40 a.m.)

THE COURT: All right. We have a setting this morning in Highland Capital, Case Number 19-34054. We have both a motion to withdraw proof of claim of HCRE Partners, LLC, as well as the reorganized debtor's objection to a motion to quash and cross-motion to enforce subpoenas.

All right. So let's start by getting lawyer appearances, please. For HCRE, who do we have appearing?

Let me get appearances first from the main parties. For the debtor this morning, who is appearing?

MR. GAMEROS: Good morning, Your Honor. Bill Gameros for NexPoint Real Estate Partners f/k/a HCRE.

THE COURT: All right. Thank you.

For Highland, who do we have appearing this morning?

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P.

THE COURT: Good morning.

All right. I'm guessing these are our only appearances. These are the only parties involved who filed pleadings. If there is anyone who felt the need to appear, go ahead.

(No audible response)

THE COURT: All right. Well, I don't know if you all have talked about the sequence we are going to take things this

morning. Obviously, the first filed motion is HCRE's motion to withdraw proof of claim. But we have a discovery dispute and I think -- well, we've got Highland objecting to the motion to withdraw the proof of claim, but I think the backup argument is at the very least let us take discovery before you rule on the motion to withdraw proof of claim.

So have you all talked about who's going to go first on this one?

MR. GAMEROS: Your Honor, we haven't spoken about it, but it makes sense to me that if we withdraw the proof of claim, it moots everything else. And I think that's really what we ought to do, take it all at one time.

THE COURT: All right. Mr. Morris, do you agree on that sequence?

MR. MORRIS: I'm happy to cede the podium and let Mr. Gameros go first since he filed the first motion, but I do think that Your Honor had your finger on the pulse that before -- either the motion should be denied for the reasons set forth in our papers or we should be permitted discovery.

THE COURT: All right.

With that, Mr. Gameros, I'll hear your opening statement and hear what your evidence is going to be.

MR. GAMEROS: We didn't file any evidence today. We just simply want to withdraw the proof of claim. I think that we've satisfied the Manchester factors.

Quite frankly, there's only been the filing of the proof of claim and a scheduling order entered. Since I've been involved in it, we've only had the scheduling order entered. Anything else that's happened in this case was a motion to disqualify that precipitated our appearance. We filed the motion to withdraw. There's no summary judgments pending, no dispositive motions pending.

Quite frankly, we've looked at it as the company continued to operate. The things we were worried about happening didn't happen. And as a result, we decided we don't need the proof of claim, we don't want to continue it because I think we satisfy Manchester. If the Court has any concerns at all, A, the debtor's reorganized so proceeding with our proof of claim or withdrawing it doesn't affect it and, B, you can conditionally withdraw with a forecredudous [*sic*] order withdrawing the proof of claim.

But, quite frankly, I don't think we could amend it and we passed the claims bar date. So the Court should simply allow NexPoint Real Estate Partners to discontinue pursuing a proof of claim that they don't want to continue anymore. Everything else falls after that. That's it.

THE COURT: All right. Well, assuming the Manchester factors apply here, you're not going to have any evidence on any of these factors?

MR. GAMEROS: I don't believe that we need to have

evidence on those. The only one that could possibly be at issue is one that the debtor might be able to bring but they haven't, and that's actual legal prejudice.

The withdrawal of the proof of claim here essentially says they win. And they've objected to our proof of claim, and now we're withdrawing it. So the proof of claim is resolved in their favor except we're withdrawing it instead of going through all of the exercise to get to a hearing where we don't want to pursue the proof of claim anymore.

THE COURT: All right. But is it a withdrawal that you seek with prejudice with any bells and whistles about future preclusion of litigation?

MR. GAMEROS: Your Honor, the proof of claim -- I know the Court knows this, it's its own type of proceeding. This isn't a adversary proceeding or a different kind of lawsuit. It's simply a proof of claim, and we know we're not going to be able to amend it, we're not going to be able to re-assert it because it's after the bar date. That's why the Court should allow the withdrawal and, to the extent the Court wishes to condition it, condition it with prejudice. That's it.

THE COURT: Mr. Morris, I'll hear from you.

MR. MORRIS: Thank you, Your Honor.

Before I begin, I'd like to move into evidence Exhibits 1 through 6 that appear at Docket 3485 and 3486.

They're mirror images of each other. They're duplicates of each other, Your Honor.

But because our motion -- our objection to the motion for a protective order and the cross-motion to compel were filed as one document, the Court had us file it basically twice so that one is serving as the objection to the motion for the protective order and the other is serving as the cross-motion to compel. And so you'll see at Dockets 3485 and 3486 duplicate declarations from me with Exhibits 1 through 6.

THE COURT: All right. Any objections?

MR. GAMEROS: Your Honor?

THE COURT: Any objection?

MR. MORRIS: And then -- and then, Your Honor?

THE COURT: I'm sorry, I did not hear what Mr. Gameros said.

MR. GAMEROS: Your Honor, we don't object.

THE COURT: All right.

MR. GAMEROS: We don't necessarily believe it's relevant, but we don't object to its admission.

THE COURT: All right. They'll --

MR. MORRIS: And then, Your Honor, we've got --

THE COURT: Docket -- Exhibits 1 through 6 are admitted.

Go ahead.

(Debtor's Exhibits 1 through 6 admitted into evidence)

MR. MORRIS: And then at Docket 3488 we have another declaration under my signature with Exhibits 1 through 16, which are offered in opposition to HCRE's motion to withdraw their proof of claim.

THE COURT: Any objection?

MR. GAMEROS: No, Your Honor.

THE COURT: Okay. Those exhibits and that declaration are admitted, as well.

(Debtor's Exhibits 1 through 16 admitted into evidence)

MR. MORRIS: So, Your Honor, if I may, please, you know, the lack of evidence and the dismissiveness with which HCRE is approaching this proceeding is alarming.

We have litigated for two years. We were forced to move and litigate vigorously a motion to disqualify our prior counsel even though we put into evidence a document that said Wick Phillips represents Highland Capital Management. We were still forced to do that. We were forced to engage in expert. We were forced to have a hearing on this.

We have gone through discovery not once but twice. We have fulfilled every single obligation that were were required to fulfill under the scheduling orders. We have engaged in two rounds of written discovery. We have offered up every witness that has been noticed. We have produced thousands of pages of documents.

We took discovery from third parties, and this is

really important for a number of reasons, Your Honor. We served subpoenas on BH Equities. BH Equities is not subject to the jurisdiction in Dallas, so we served the subpoena. We took the deposition.

They can't be compelled to testify at a hearing. HCRE chose not to ask any questions. The accounting firm, they chose not to ask any questions. Discovery is over, okay. I hear Counsel talk about the proof of claim. We need -- and this is where the prejudice comes in. We need an order on the merits. We need to know that HCRE is never going to challenge again Highland's 46.06 percent interest in SE Multifamily. That's what we need, because that's what we were about to get and they know that. And that's why they're folding their tent.

We informed them that we were moving for summary judgment. In fact, just seven days before they filed their motion, we negotiated a stipulation in order to extend the expert discovery deadline so that they could file an expert report while preserving Highland's ability to move for summary judgment. HCRE knew this when it filed its motion.

Discovery is now closed. There's only three things left to do. There's four things left to do: take the deposition of Mr. Dondero, Mr. McGraner (phonetic) and HCRE and have a hearing on the merits.

I want to say right now, Your Honor, Highland is willing to forego its right to move for summary judgment. We

don't need to take that step. Let's just proceed. This motion should be denied. They offer no evidence whatsoever. Let's just proceed with the three depositions because discovery is otherwise closed and let's have a one-day trial live in your courtroom, Your Honor. We could have this done in six weeks.

The legal prejudice is enormous. We've set it out in our papers. Our evidence supports it. But I want to just highlight a few things. Again, I hear vagueness here. I hear you can dismiss the proof of claim with prejudice, but somehow I get the feeling from their papers from the cases that they cited to, from the quotations that say just because we get a tactical advantage doesn't mean that the motion should be denied, just because we may choose to file this in a different forum.

And that's the question that I really hope the Court will ask Mr. Gameros. Is HCRE waiving its right to ever challenge this again because if you can't get an unambiguous answer to that question, the motion must be denied because that's the prejudice.

But there's more prejudice, too. They've taken our deposition and based on what Mr. Gameros just told you, based on what's in their papers, they perceive something that happened in that deposition as being advantageous to them. If this Court were to consider dismissing this case with prejudice, it should do so on the condition that that

transcript cannot be used for any purpose at any time anywhere because otherwise it's not fair, otherwise we've been prejudiced by them being permitted to take our deposition but foreclosing us from taking their deposition. Either the playing field needs to be level or that deposition transcript should never see the light of day.

That's condition number two, not just the dismissal with prejudice here, we need an ironclad commitment that HCRE is irrevocably waiving its right to challenge Highland's interest in SE Multifamily because that would be the result if this went to trial. And that transcript of Mr. Seery as Highland's 30(b)(6) witness should never see the light of day because they're playing games. They want to use that for some other purpose. And if they want to do that, that's fine, but I get to take their depositions. The playing field has to be level, Your Honor.

We have spent hundreds of thousands of dollars on this case. The excuse that they're giving, the reason that they're giving for dismissing the case at this time makes no sense whatsoever. There's nothing in the proof of claim, nothing in the pleadings. There will never be any evidence.

There's no affidavit suggesting that Highland was interfering with SE Multifamily, that Highland threatened to interfere with SE Multifamily, that until this motion was filed that HCRE had any concerns whatsoever that Highland would be

engaging in wrongful conduct. There will never be any evidence whatsoever that HCRE ever took any steps to protect itself from this so-called interference that they're now so fearful of.

And I do want to -- I have to ask this question, Your Honor. If HCRE believed that they were at risk on Wednesday, August 10th, so that they had to take Mr. Seery's deposition, what happened after that that caused them 48 hours later to file this motion with no notice whatsoever?

It's not right, Your Honor. So let me get to the substance. This is not a motion under Rule 41. Under Rule 41, plaintiffs sometimes have the right, the unilateral right to withdraw a pleading. HCRE has no right to that today. Rule 3006 is very clear. When there is a proof of claim that is contested, the proof of claim can only be withdrawn with court approval after a hearing and subject to whatever conditions the Court decides are appropriate.

And that's to protect the integrity of the process. And that's what we're asking the Court to do, to protect the integrity of the claims resolution process.

It is a fact-intensive inquiry. In this district, as HCRE has pointed out, there is precedent, the Manchester case, that sets forth a long list of factors that a court could consider in the face of such a motion. As we explain in our opposition, we believe that every single one of those factors weighs in favor of denying the motion.

I'm going to go through just a bit of it, Your Honor, because I think it's very important that everybody see exactly what's happening. In contrast to the lack of evidence by HCRE, we have all of the exhibits that have just been admitted into evidence here. The claims stated, the proof of claims, start with the proof of claim, stated that some or all of Highland's interest in SE Multifamily might be the property of HCRE.

It's a proof of claim that was signed by Jim Dondero. It was signed under the penalty of perjury. There is no good-faith basis for that proof of claim to have been filed, none whatsoever. If you take a look at their response to Highland's initial objection which can be found at Exhibit 7 on the initial docket, we'll put it up on the screen jut -- here's Exhibit 7 from Docket Number 3488.

And this is HCRE's response. And if we can go to Paragraph 5. This is the -- this is really their response here. And it says:

> "After reviewing what documentation is available to HCRE with the debtor, HCRE believes the organizational documents relating to SC Multifamily improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or the failure of consideration. As such, HCRE has a claim to reform, rescind, or modify the agreement."

This is their proof of claim, that there was some mistake that happened in the drafting of the SE Multifamily documents. There is no good-faith basis for this proof of claim. There is no good-faith basis for this response that's up on the screen. And let me show you why.

If Your Honor had an opportunity to review BH Equities' deposition transcript, at least the portions that we specifically cited to, BH Equities is a truth third party. They're the only third party that is a member of SE Multifamily. I took their deposition. They retained Dentons. They produced documents. They acted professionally.

And their witness testified up, down, and sideways that from their perspective, it was a bilateral negotiation with them on one side and the grand Highland on the other side and that Highland drafted the ultimate agreement, the amended and restated LLC agreement.

It's an issue that is not in dispute. Highland drafted the document. People working on the Highland platform in the spring of 2019 when Mr. Dondero was in control, solely in control of Highland and HCRE.

So they say in that response and in the proof of claim that the allocation, the allocation is the allocation of the membership interest in SE Multifamily, they say, oh my goodness, that allocation was wrong because Highland only put in $49,000. And Mr. Dondero signed the agreement.

Let's take a look just quickly at Exhibit 5, and let's see how it's possible that Mr. Dondero could swear under oath that he made a mistake. If we can go to Schedule A.

Take a look at this, Your Honor. This is Schedule A. It's about a page or two after Mr. Dondero's signature. It has the percentage interest that he says was a mistake as if he didn't know the capital contribution that Highland put in. And if we got to a trial, Your Honor, we would show that Highland actually reached into its pocket for the $49,000. HCRE, in contrast, borrowed all the money, even though Highland was on the hook for the obligations to Key Bank.

But, nevertheless, here it is. It's in plain, plain, plain terms. The numbers are next to each other. It's not just the percentage interest. It shows the capital contribution. I'd be really interested in asking Mr. Dondero did he review this. I suspect he'll say no because that's what he usually says. But doesn't that scream fraud? How do you say you made a mistake when the numbers are on that page? I don't understand it.

Yet, we've spent two years and hundreds of thousands of dollars litigating this case. But here's the thing, Your Honor, it's not just in Schedule A. If we could go to Section 1.7 earlier in the agreement.

And remember, this is a document that BH Equities says was drafted by Highland. Look at 7; 7 is company

ownership. That's the name of the section. Again, HCMLP has 46.06 percent. Is that a mistake? How did this -- somebody should explain how this mistake happened.

Let's go to Section 6.1. Section 6.1 is critical, and we'll see this in a moment. This is what's known as the waterfall. It shows how the distributions of cash from SE Multifamily are going to be made to its members. And you'll see in Section 6.1A that after certain things occur, cash is going to be distributed 46.06 percent to Highland. Another mistake, I guess, without explanation.

Section 9.3. Section 9 deals with liquidation and termination, and 9.3 is effectively the waterfall that's supposed to be in place upon a liquidation. And at the bottom of the waterfall in 9.3(e), not surprisingly, you see the exact same allocation.

So the allocation that Mr. Dondero swore under oath was the result of a mutual mistake was an allocation that appears in four separate places in a document that was drafted by people under his authority. Think about that. It's extraordinary. We spent two years litigating this case, and now they just want to go home.

But wait, there's so much more, Your Honor. I'm not going to go through all of it, but I want to just show you two other documents because these numbers are not in this document by accident. They're there on purpose.

If we could go to Exhibit Number 11.

So if you've seen from our papers and at all, Your Honor, Highland presented an initial draft of the amended and restated agreement to BH Equities on March 14th. It had to be completed by March 15th in order t make it retroactive to the prior August because that's for tax reasons. And you'll see up on the screen there's an email exchange from Mr. Broaddus at Highland to a fellow named Dusty Thomas at BH Management.

And it's two emails. The first one is sent on the afternoon of March 15th. And the important point is a little bit down where he says: "The contributions schedule in the attached needs to be updated with the actual contribution numbers."

So this is Highland telling BH Equities that the contribution schedule, which is Schedule A, needs to be updated so that the actual contribution numbers are in it. This is the mistake. This is the mistake, right. And notice that Mr. McGraner, I'm told is one of the Apex employees, he's got notice of this. He know exactly what's happening, right.

And Mr. Broaddus follows up. He follows up the next day and says the contribution schedule is attached. Well, let's take a look at what the contribution schedule is, if we can go to the next page. Look at that.

It's the same contribution schedule that appears in the final agreement. And this is just critical, Your Honor,

because this shows that Highland, people working at the direction of Highland are preparing this document and it's a stand-alone document. So it's not as if somebody can say, gee, you know, it got lost in the sauce, it was deep in the details, deep in the weeds and I just missed it.

The very purpose of the sending of this document was to show the other counterparty, BH Equities, exactly what the capital contribution and percentage interest were going to be, not just the percentage interest but the capital contributions.

Later on that day, if we can go the next document, Exhibit 13. BH Equities was very concerned about the waterfall. They wanted to make sure that they were going to get back their capital before other distributions were made. And you can see here this is an email from Mr. Thomas back to Mr. Broaddus where he raises this issue, and I'll just kind of cut to the chase. Attached to Mr. Thomas' email was a proposal that BH Equities had made the prior fall with respect to the waterfall.

There's no dispute that Mr. Broaddus on behalf of Highland, the big Highland, rejected BH Equities' proposal. And if we can go the prior page and see exactly what they did in response. Instead, you can see Mr. Chang, Freddie Chang, another member of the Highland complex, with a very private email to Mr. Broaddus, right, BH Equities isn't even copied on it. And he comes up, it's labeled 6.1, but this is what

becomes -- it's labeled 1.1, but this is what becomes 6.1 in the actual agreement. This is the waterfall. This is Mr. Chang and Mr. Broaddus exchanging an email with a new version of the waterfall that they wanted. And the new version that they wanted shows in Section 1.1(a) here that Highland was going to get 46.06 percent of the distributable cash as set forth therein.

A mistake? A mutual mistake when people working under Mr. Dondero's direction drafted these documents in specific -- as part of a negotiation? This is about the only thing that was the subject of a negotiation.

And, of course, there's more because if you take a look at the deposition transcript that we cited from BH Equities from BH Equities' perspective, Section 1.7, 6.1, and 9.3 and Schedule A all reflects the parties' intent. And that deposition is closed, right. I mean they chose not to ask any questions. They didn't challenge that. There is no good-faith basis for this proof of claim to have ever been filed. And that, Your Honor, is the definition of vexatiousness, and that is one of the Manchester factors.

Another one of the factors is the extent to which the suit has progressed. Other than the depositions that they unilaterally shut down, the only thing left was either a summary judgment motion or a trial. Again, discovery is over. Highland has fulfilled its obligations. There is nothing left

to do here except to take three depositions and have a trial on the merits. So the suit has progressed far.

Duplicate of expense of re-litigation, are we really going to do this again? Are they really going to get the benefit of new discovery in a new lawsuit somewhere else that's not a proof of claim but that somehow tries to recraft it because we've seen stuff like this before from Mr. Dondero. He's going to say, oh, that was just a proof of claim, that's a different standard that somehow, you know, I can bring a different claim in a different court at a different time. We're going to do this again? I hope not.

How about the adequacy of the explanation? They concluded that Highland wasn't interfering. Where was the evidence that Highland ever interfered? Where was the evidence that Highland ever threatened to interfere? Where was the evidence that HCRE ever expressed a concern that Highland would interfere? Where's their application to the Court for some kind of protective order or some type of protection, some type of injunction relief to prevent us from interfering? There's nothing.

HCRE filed this -- and I'll have to speculate here because they're not -- I don't thing they're being candid with the Court. They filed it because they hoped to do this trial in a different forum at a different time elsewhere.

They're shutting it down because they know that their

witnesses are going to be asked questions that are going to further buttress Highland's claims to breach of contract, going to get into some serious tax questions where even BH Equities wouldn't even rely on the K-1s that HCRE caused to be prepared. Really tough questions.

I know they want to get out now, but they never should have filed the proof of claim. And forcing Highland to go down this path to incur this expense, to take our deposition and then try to shut the door, can't think of a better fact scenario for the denial of a 3006 motion than we have here.

Look at just what happened in the seven days before they filed their motion because it is extraordinary, and I didn't even put everything in the papers because one of the things I forgot to put in is Mr. Gameros sent to me seven days before the motion the 30(b)(6) notice for Highland. So that's sent on August 5th.

On August 5th, we finish negotiating and sign a stipulation that extends the expert discovery deadline to allow them to call an expert which we think had no merit which is why we reserve the right on the motion to strike because we don't think -- as described to us at the time, but nevertheless, we reserved our right to either make a motion to strike or to proceed right to summary judgment. It's all in the stipulation that we negotiated, that we signed on behalf of the clients, and that Your Honor's approved just two days before this is

filed.

I think Mr. Seery's deposition was the 10th. At 4:00 on the 9th, HCRE produced over 4,000 pages of documents like six weeks after the deadline, right. And Counsel and I spent the next 24 hours -- you know, I was pretty upset, I'll admit it, but you've got -- you know, it's in the record, you know, what my written responses were. And I tried very hard to avoid motion practice, and I tried very hard as I always do to try to come to a reasonable resolution. And we actually got to that point just moments before Mr. Seery's deposition. And then they take Mr. Seery's deposition.

So think about it. They serve a 30(b)(6) notice, they take a deposition, they produce 4,000 pages of documents, they negotiate and sign a stipulation to extend the discovery deadline, the Court takes the time to review the stipulation, orders it. All of this happens within seven days of their motion, two days after they take Mr. Seery's deposition and just two days before I'm scheduled to take their client's depositions.

Based on the complete lack of evidence on HCRE's part and the evidence that I've just shown the Court, we believe the Court should simply deny the -- deny all three motions, you know what I mean? Let's just cut to the chase, let's take three substantive depositions, and let's set a trial date. That, I believe, is the most appropriate result here.

If the Court is not inclined to rule on the motion to withdraw, the Court should then deny the motion for a protective order and grant our cross-motion to compel the depositions on this motion. I assure the Court that if the Court decides to follow that path, my questioning will be limited to the Manchester factors. And I won't get into the substance because that wouldn't be ripe.

The first question is whether or not they have a right to -- whether the Court should grant their motion to withdraw, and I will limit my questioning if we go down, you know, option B to those questions, to the Manchester questions, right. There's no question that we have the right to discovery. They filed a motion. We filed an objection. We now have a contested matter under the bankruptcy rules. We're entitled to discovery.

I want to address, I guess, on this topic some of the issues that were raised in the motion for the protective order. They say, oh, we didn't serve the witnesses. That's easily -- well, first, I would point out that if you looked at Exhibit 1, you know, Counsel previously accepted service of subpoenas on Mr. Dondero and Mr. McGraner's behalf. Maybe he's got an explanation why he did it before but he won't do that now. But if that's the way HCRE wants to do it, we'll hire professional process servers that can -- that give us a couple of weeks and we'll find them. We'll find them. And if not, we'll get the

adverse inference.

They said we didn't give enough time, that we didn't take into account their scheduling. Just look at Exhibit 4, Your Honor. I specifically wrote to Counsel, it's there in writing. You know, it's there in writing. If you need an accommodation, let me know. Let me know if the dates and times work. I have flexibility. I told him that in writing. And yet, the reason the Court should enter a protective order is because we didn't give them sufficient time or we wouldn't take into account their schedules.

We've got all the time now, Your Honor. I'm actually not available next week, but after that, I can take these depositions any time the last week of September, the first week of October, whatever is convenient for them. That is no reason to grant a protective order.

And then, finally, this notion that, you know, Mr. McGraner and Mr. Dondero are some Apex employees, Your Honor, HCRE has no employees. None. Mr. Dondero signed the original LLC agreement. He signed the amended LLC agreement. He signed the proof of claim. Who else should I be deposing? Mr. McGraner owns a substantial interest of HCRE. He's on the emails that show he had contemporaneous knowledge that people working in the Highland complex were drafting Schedule A in a manner that was ultimately accepted not just by Highland and HCRE but by a third party, BH Equities.

There's nobody to depose other than Mr. McGraner and Mr. Dondero. I mean I guess Mr. Ellington, I haven't thought about that. He is a five percent owner. But for a company with no employees, who else am I supposed to depose?

Finally, Your Honor, I've taken probably enough time here. But option C, right, I think this just be denied outright. If not, we should at least be permitted to get some discovery before the Court rules on the motion. Option C, if the Court really wants to dismiss this -- grant the motion in any respect, there ought to be severe conditions on it.

It has to be a dismissal on the merits. It has to be a dismissal that pays Highland its reasonable legal fees incurred for this waste of time. And it has to be conditioned on the fact that Mr. Seery's deposition transcript will be barred from use in any proceeding going forward or they have got to show up for the depositions to level the playing field.

So that's where we are, Your Honor. Three choices. You know, they're in the order that we think are most appropriate. But I've got nothing further at this point, Your Honor.

THE COURT: All right. A couple of questions for you.

You've represented as an officer of the Court that your client, the estate, has incurred hundreds of thousands of dollars of attorneys' fees and costs relating to this proof of

claim. Is that correct?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. And I'm just curious, did this claimant, HCRE, file other pleadings during the Highland case, like objections to the plan or -- I remember discovery disputes when Wick Phillips was involved in the main case. But I'm just curious, did you look at other times they may have participated as a party, a creditor?

MR. MORRIS: In all candor, Your Honor, I haven't --

THE COURT: Okay.

MR. MORRIS: -- looked at that. My memory, which could be wrong, my memory is that they did file other things, although it's possible I'm just confusing it with Wick Phillips representing different entities of Mr. Dondero. But I believe that Wick Phillips was involved in other matters. I think HCRE filed other things, but I don't know off the top of my head.

THE COURT: Okay. So the representation that hundreds of thousands of dollars were spent on this proof of claim dispute, I mean you're zeroing in on this proof of claim dispute. Is that correct?

MR. MORRIS: One hundred percent limited to this proof of claim.

I mean think about what we did here, Your Honor. We had a whole litigation over Wick Phillips. Both sides retained experts. We took fact discovery. We participated in written

discovery, something that never ever should have happened. But we were forced to do that, and I do include that as part of this.

What else have we done? Because I think it's -- I think Your Honor's asking a fair question, like how do you get to that number. Before the Wick Phillips' disqualification motion and the reason that we got to that point is we had engaged in written discovery. And this is back in the spring of 2021. We served, you know, document requests, we served requests to admit, we served interrogatories. All of that was answered.

We produced thousands of pages of documents at that time. And it was in preparing for the depositions that were then scheduled that we saw in the documents the conflict that Wick Phillips had. So we went though that whole process throughout the rest of 2021, completely unnecessary. Just completely unnecessary, but nevertheless, we did. We prevailed.

New counsel came in in January and did nothing, right. It took us six months to get to a scheduling order. It took me almost three months to get them to respond at all. But we did the whole thing again, and we went through more written discovery and more interrogatories and more requests to admit and more document requests. And we produced more documents.

We served subpoenas on Mark Patrick, on BH Equities,

on Baker Vigotto, the accounting firm that prepares the tax returns at the direction of HCRE on behalf of SE Multifamily. There's lots of negotiations in there. There's -- I mean Your Honor can see just how many times depositions were scheduled and rescheduled and rescheduled again to accommodate everybody's summer and business, right.

So we took the deposition of Mr. Patrick. We took the deposition of Barker Vigotto. We took the deposition of BH Equities. We defended Mr. Seery and his deposition. We took the time to prepare for that. We were reviewing the 4,000 documents that they produced belatedly, right. We're marshaling our evidence, getting ready for our summary judgment motion. We're negotiating amendments to scheduling orders at HCRE's request.

Yeah, we spent several hundred thousand dollars, Your Honor, for sure.

THE COURT: Okay.

All right, Mr. Gameros, do you have cross-examination of Mr. Morris?

MR. GAMEROS: I don't have cross-examination of Mr. Morris. I'd just like to respond to a few points if I could.

Is that permitted, Your Honor?

THE COURT: Oh, yes. I mean this was your chance to cross-examine Mr. Morris since he submitted a declaration with exhibits. But if you decline to do that, I think Mr. Morris --

MR. GAMEROS: Cross-examine Mr. Morris, Your Honor?

THE COURT: Just -- Mr. Morris, the reorganized debtor rests, right? I got the impression you were resting?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right.

MR. MORRIS: Yes.

THE COURT: Mr. Gameros, now your chance for rebuttal.

MR. GAMEROS: All right.

First, in terms of hundreds of thousands of dollars of fees and the activity level since my firm appeared in January of 2022, I think we need to look back at the disqualification proceeding and remember that the estate was denied its request for attorneys' fees on the disqualification and that's in this Court's order.

If we proceed to trial, they won't be entitled to attorneys' fees for winning, if they do. There's no claim here that entitles the estate to shift its attorneys' fees to NexPoint. None.

And I think that's important. The relief that he's asking for, Your Honor, if you listen to what the estate's requesting, it wants to limit the use of Mr. Seery's deposition. It wants to have a trial. Now apparently they may not move for summary judgment. Okay. Things that they would like, but all they get is a ruling on a proof of claim. And

we've already said the Court should allow us to withdraw the proof of claim and condition it with prejudice.

There is no other lawsuit out there. There is no other position being taken anywhere. Frankly, Your Honor, the reason why I said admit the exhibits and I question their relevance is because none of them go to actual legal prejudice. Can't show it, hasn't shown it, hasn't demonstrated it. It says they did a lot of work, gave you the greatest hits of some email, but quite frankly, Your Honor, that goes to merit, not legal prejudice. That goes to, I believe, part of their story as to what happened.

The story that matters to me is we think things were going to happen during the estate, he's right. We didn't move for them. We looked back at it and said we don't need the proof of claim anymore, we should withdraw it. That's the only thing that's happened, and that's why we're here. We don't think he's entitled to discovery as to why we withdrew the proof of claim.

It's his burden to show legal prejudice. He can show it or he can't. He hasn't.

THE COURT: Okay.

MR. GAMEROS: The estate hasn't.

THE COURT: Mr. Gameros?

MR. GAMEROS: (Indiscernible) Mr. Dondero.

THE COURT: I have a question. I mean I'm looking at

your pleading, your motion to withdraw the proof of claim, and I'm looking at this wonderful chart you have on Page 7 saying here are the standards under Bankruptcy Rule 3006, you, Court, should consider. They were articulated in the Manchester case.

And it's not merely about is there any prejudice to the estate. I mean you set forth five factors. One is "reason for dismissal." One is diligence in bringing the motion to withdraw. One is undue vexatiousness. One is the matter's progression including trial preparation. One is duplication of expense of relitigation.

This is your own authority, which I believe actually is correctly articulating the standards. It's not just about prejudice. Yes, I agree that some of the case law has zeroed in on that one in particular. But I mean you say yourself reason for dismissal is a factor the Court must consider.

MR. GAMEROS: That's correct, Your Honor. Those are the factors, and I think our analysis on them is correct.

If we go all the way to trial and the result is that our proof of claim is denied, we're in the same position we are right now. So why should the parties, the estate, and the Court go through that exercise?

THE COURT: Okay. Well, that's another issue, I think, other than the reason for dismissal. But a follow-up question to what you just said is this.

Would you agree to a condition on the withdrawal of

your proof of claim that your client agrees that Highland has a 46-point whatever it was percent interest in SE Multifamily Holdings and your client waives any right in the future to challenge that interest?

MR. GAMEROS: Your Honor, if that's what the Court wants to put in an order and I have a chance to confer with my client on it, I'm pretty sure that would be agreeable.

THE COURT: Today's the day. I'm not going to continue. I've got, you know, the whole day booked if I needed it because I wasn't sure what you all were going to want to put on.

MR. GAMEROS: Your Honor, we'd agree with that.

MR. MORRIS: Your Honor, I'm sorry to interrupt, but a waiver of any appeal, too. I just hard that if that's what you want to put in the order, that's okay. But this case has to end, and that's what we're looking for.

We're a post-confirmation estate that will not go forward with the possibility hanging over its head that it may be divested of this asset. That is what this proof of claim and this dispute is about.

And what the debtor needs in order to avoid legal prejudice is the complete elimination of any uncertainty that it owns 46.06 percent of SE Multifamily. And if HCRE is not willing to give that comfort today, we again renew our request for a direction that the three HCRE witnesses appear for

substantive depositions and we get this on the trial calendar.

MR. GAMEROS: Your Honor, we'll agree to it.

THE COURT: Well, you know what, this is such a big deal I really need a client representative to say that. It would be that --

MR. GAMEROS: I don't have one here today, but I can get you one.

THE COURT: How soon --

MR. GAMEROS: Do you want me to file a stipulation or an affidavit?

THE COURT: Pardon?

MR. GAMEROS: Do you want me to file an affidavit?

THE COURT: Well, let's be a hundred percent clear. Your client would state that with the granting of the motion to withdraw proof of claim number 146, HCRE is irrevocably waiving the right to ever challenge Highland Capital Management's 46 percent interest -- and I know it's 46-point something -- 46 percent interest in SE Multifamily Holdings, LLC and is, likewise, waiving the right to appeal or challenge the order to this effect.

MR. MORRIS: Your Honor, if I may, perhaps we can take a ten-minute recess and allow him to consult with his client and perhaps get a client representative on the phone who can make that representation?

THE COURT: All right. Mr. Gameros, you think you

can get a client rep on the WebEx?

MR. GAMEROS: I'm pretty sure I can, Your Honor.

THE COURT: All right. Well, how about we take a 15-minute recess. Does that sound a reasonable amount of time? We've got, you know, two dozen people --

MR. GAMEROS: It does, Your Honor.

THE COURT: Two dozen people on the WebEx. I don't know if maybe one is a client representative, but we'll take a 15-minute break and I'll come back. Okay.

THE CLERK: All rise.

(Recess at 10:33 a.m./Reconvened at 10:50 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

We're back on the record in Highland.

Mr. Gameros, how did you want to proceed now?

MR. GAMEROS: Your Honor wanted me to get a representative of NexPoint Real Estate Partners to state that they agree that the estate has its 46 percent interest in the company agreement subject to the company agreement. And I've got Mr. Sauter here who has authority to speak on behalf of NexPoint Real Estate Partners.

THE COURT: All right. Well, so what is his position with HCRE?

MR. SAUTER: Your Honor, I don't have -- this is DC Sauter. I don't have an official position with HCRE, but I

have spoken with Mr. Dondero and he has authorized me to appear here today and agree to the conditions that Mr. Gameros just outlined.

THE COURT: All right. Well, it sounds like hearsay to me. I don't know -- Counsel, let me have you both respond. You know, I worry about this will fall apart the minute Mr. Dondero is instructing a lawyer, I never agreed to that. I mean I just don't know. This is highly unusual.

First --

MR. GAMEROS: Your Honor, if I might?

THE COURT: Please.

MR. GAMEROS: Mr. Sauter is an officer of the Court. He works, you know, with Mr. Dondero at his business at NexPoint; certainly an authorized agent on behalf of NexPoint Real Estate Partners to make this agreement on behalf of NexPoint Real Estate Partners.

To the extent that the condition that you originally described as a conclusory matter, in other words, how to end the withdrawal, we already agreed to that, that we also can agree on the record to waive any appeal. Mr. Sauter is authorized to agree to that, as well.

So I think as an agent and a lawyer on behalf of NexPoint Real Estate Partners, he's fully able to do that.

THE COURT: How do I know he's able to do that?

And, by the way, if Mr. Dondero is in I guess the

last 15 minutes given him authority to testify before the Court, why couldn't Dondero just get on the WebEx himself?

MR. SAUTER: Your Honor, I think he felt more comfortable with me being a lawyer agreeing to those terms so that he wouldn't misstate something. He has been listening. I believe he's still on, although I'm not certain.

THE COURT: Mr. Morris, do you want to respond? I mean I'm not sure, frankly, I care what you say, no offense. I don't think I have a person with clear authority here.

MR. MORRIS: I'll just be quick and say I agree.

THE COURT: Okay. Mr. Gameros --

MR. GAMEROS: As an attorney for NexPoint Real Estate Partners, I have the authority to make that agreement on the record and it be binding. Mr. Sauter is confirming that authority having spoken with Mr. Dondero about it.

I think that the Court is fully --

THE COURT: Mr. Gameros --

MR. GAMEROS: -- capable of doing that --

THE COURT: Mr. Gameros, come on. You know this is the client's decision to make. Okay. I don't have a client representative. I don't have an officer or controlling equityholder as evidence here of --

MR. MORRIS: Mr. Dondero --

THE COURT: -- the willingness to make the agreement. Pardon?

MR. MORRIS: Can Mr. Dondero make the representation on the record to the Court that he is authorizing Mr. Sauter to waive any claim that HCRE has to Highland's 46.06 percent interest in SE Multifamily along with any appeal? This is just step one. But if Mr. Dondero was on the phone, let him speak up and make it crystal clear that he is delegating the full authority to Mr. Sauter to negotiate and enter into this consensual order on behalf of HCRE.

THE COURT: All right. Mr. Gameros, do you want to give your client authority to speak up? Your client representative, someone who's actually an officer or a controller or equity owner?

MR. GAMEROS: Your Honor, if Mr. Dondero can do that, that would be great. I don't know if he's in a place where he can do that.

THE COURT: All right. Mr. Dondero, if you can hear us, are you willing to give some quick testimony in that regard?

(No audible response)

MR. DONDERO: I can't see the box --

UNIDENTIFIED SPEAKER: Surprising that -- surprising he was on the phone before, but now he's not after delegating. Just I'm not --

MR. SAUTER: Your Honor, he's on the phone. I'm just -- if you will give me a minute, I got to run around the corner

and try to make sure he knows how to unmute himself.

THE COURT: Star 6. If he's on a phone, star 6 is the way to unmute himself. But I want to see video, too.

THE OPERATOR: There we go. Try again.

MR. DONDERO: Hello?

THE COURT: All right.

MR. DONDERO: Hello?

THE COURT: Mr. Dondero, is that you?

MR. DONDERO: It's me. I've been on the entire time.

THE COURT: All right. Can you turn your video on, please?

MR. DONDERO: I am on my cell phone.

THE COURT: Okay. Well, so I guess you just called in on your cell phone, you don't have a WebEx connection on your cell phone?

MR. DONDERO: I don't have a WebEx.

THE COURT: Okay. Well -- yeah, it sounded like you were in the same office as Mr. Sauter. Is that -- did I misunderstand?

MR. DONDERO: We work in the same office. I'm in my car. I just stepped out of my car.

THE COURT: All right. Well, this is not ideal, you know, without us seeing you. But I'll go ahead and swear you in. All right. Can you hear me okay? I need to swear you in.

MR. DONDERO: Yes.

THE COURT: All right.

JAMES DONDERO, HCRE'S WITNESS, SWORN

THE COURT: All right.

Mr. Gameros, do you want to ask him the questions we need to hear answers on, please?

MR. GAMEROS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, on behalf of HCRE, do you agree as a condition for withdrawing the proof of claim that HCRE will not challenge the estate's ownership or equity interest in SE Multifamily subject to the company agreement?

A Yes.

Q Do you agree that you will not appeal and that, therefore, HCRE is waiving any appeal right to that determination as a condition of withdrawing the proof of claim?

A Yes.

MR. GAMEROS: Those are the questions for Mr. Dondero.

MR. MORRIS: Your Honor, if I may?

THE COURT: Mr. Morris, you may.

MR. MORRIS: I'm very uncomfortable. I'm very uncomfortable with the inclusion of the language subject to the company agreement. It sounds like a very conditional waiver. We need an irrevocable unconditional admission by HCRE that

Highland owns 46.06 percent of SE Multifamily, period, full stop. If they want to keep conditions in there and make it conditional and make it subject to other things, let's please deny the motion and proceed to trial.

THE COURT: All right. Well, Mr. --

MR. GAMEROS: The equity that they own is part of the company agreement. It's not modifying the company agreement by saying.

THE COURT: Well --

MR. MORRIS: Our ownership is not subject to the agreement. We either have an ownership interest or we don't. Our rights and obligations as a member of SE Multifamily are subject to the agreement, but our ownership interest is not. And that's the ambiguity that we need to remove.

THE COURT: Okay. Well, Mr. Gameros, do you want to rephrase the question or are you not willing to make the agreement as specific as Mr. Morris says he needs it?

MR. GAMEROS: That's what I'm -- I guess I don't understand what his complaint is. If the estate owns 46 percent of the equity of SE Multifamily, it owns that subject to the company agreement. It's not a separate ownership interest. So I don't know what the problem is.

THE COURT: Okay. Let me try to phrase it as I understand it.

What I understand has been asserted in the proof of

claim is that what was set forth in the agreement was a mistake, okay. A mistake. And it sounds like you're using language that says we'll agree the agreement, you know, they have a 46 percent interest pursuant to the agreement. But that doesn't change -- that does not really zero in on the argument made in the proof of claim that there was a mistake in the agreement, right?

So you'd have to go broader to completely resolve the issues raised in your proof of claim and say we agree, Highland has a 46.06 interest in SE Multifamily and we agree that is correct and we waive any right to challenge it in the future and we waive any right to appeal this order.

MR. GAMEROS: And, Your Honor, if that's the condition, I guess my concern is that the 46 percent is still part of the company agreement. We agree not to challenge it on the basis of anything asserted in the proof of claim, that being mistake, lack of consideration, or failure of consideration. Their 46 percent is their ownership interest in SE Multifamily and HCRE won't challenge that.

Is that sufficient?

THE COURT: Well, I need to hear from your client. I mean he needs to be asked every which way from Sunday whether he is waiving the right to challenge Highland's 46.06 interest from now until eternity, okay. That's basically, you know, we either have that agreement or we'll just have a trial.

CONTINUED DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, do you agree that NexPoint Real Estate Partners will not challenge in any way the estate's interest in SE Multifamily, its 46-point whatever percent interest that is?

A I think the nuance is that agreement is okay in current as of today. But it's part of an operating agreement, and that percentage ownership can change due to capital calls and other things. And it could change over time. It's never in a partnership agreement fixed into perpetuity. And so no businessman can agree to that.

If the Court wants it fixed into perpetuity, that would be very odd.

MR. MORRIS: Can we go to trial, Your Honor? Can we just deny the motion and go to trial? Let me have my depositions and go to trial. This is -- if Mr. Dondero wants to take that position, he's welcome to do that. But I'm entitled to finality, and I'd like to get there.

THE COURT: All right. Well, Mr. Gameros, anything else you want to ask your client that you think might be helpful?

BY MR. GAMEROS:

Q Mr. Dondero, you desire to withdraw the proof of claim. Correct?

A Yes.

Q And you agree to an order denying the proof of claim with prejudice. Correct?
A Yes.
Q And can you agree that HCRE will not challenge the equity ownership of its member in SE Multifamily of the estate?
A Yes.

MR. GAMEROS: Your Honor, I think there it is.

THE COURT: Mr. Morris, do you have any --

MR. GAMEROS: He agrees.

THE COURT: -- do you have any follow-up questions --

MR. MORRIS: The waiver of the right to --

THE COURT: -- Mr. Dondero?

MR. MORRIS: The waiver of the right to any appeal whatsoever. And I do have -- you know, there are the other conditions that we mentioned earlier, right? Either they have to also agree that Mr. Seery's deposition transcript shall never be used for any purpose at any time or they need to level the playing field and submit their witnesses to examination.

The playing field needs to be level here. Either if they want to use that deposition transcript for some purpose, I have no problem with that. Just let me take my depositions. If they don't want to submit their witnesses to depositions, then they also have to agree that that transcript will never be used for any other purpose. It's as if this proof of claim has never been filed, right, for that purpose, right. Because

that's just not fair. That's the legal prejudice.

How do you take my client's deposition on Wednesday and file this motion on Friday knowing your client's supposed to be deposed on Tuesday? Level the playing field. That's conditional number two.

And condition number three, frankly, Your Honor, this proof of claim was fraudulent. I mean my client has been damaged. My client has spent an enormous amount of money on this, and I'd like them to agree to if not make us whole, you know, do something because it's wrong. It's just wrong that Mr. Dondero files proofs of claim under penalty of perjury that have absolutely no basis in fact.

It's distressing. I'd like those two last issues addressed, as well.

MR. GAMEROS: Your Honor, in terms of the Court's questions in terms of finality with respect to the membership interest in SE Multifamily, Mr. Dondero agrees with the Court. He's already said that he won't waive -- that he waives, rather -- I'm sorry, let me start again.

He has said very clearly that he has waived appeal of this order allowing the withdrawal of the proof of claim with the conditions that you asked for. I think you should grant the motion to withdraw and we can put an end to all of this.

THE COURT: Okay.

MR. MORRIS: Here's the thing, Your Honor. We know

there's going to be more litigation with HCRE. We know they've breached the contract. We know because the evidence is in the record. We know that Highland demanded access to books and records as is its contractual right back in June. We know that that notice was sent to all of Mr. Dondero's lawyers and HCRE's lawyers. And we know that that request has been absolutely categorically ignored. Okay?

We are going to --

MR. GAMEROS: This has nothing to do with the proof of claim.

MR. MORRIS: We are going to get -- well, no.

To be clear, Your Honor, that is what's driving this concern is because we know that there's going to be additional litigation. We know the tax forms are not accurate. We know there's already an existing breach of contract.

And what we're trying to make sure is that HCRE is not able to resurrect this concept that we don't have an ownership interest, that it's not 46.06 percent, that Mr. Seery made some admission that they're going to use in some future litigation. That's the prejudice, okay.

So I think step one is (indiscernible), but then we need either an agreement that the transcript isn't going to be used elsewhere or that I get the deposition of the HCRE witnesses because it's unfair prejudice to use this process to take that deposition on Wednesday, August 10th and to file this

motion on Friday, August 12th. That is unfair prejudice for them to have taken my client's sworn testimony and then shut it down before I could take theirs.

So either eliminate it all or let it all in, right? It can't be. They can't possibly benefit from this.

THE COURT: Let me understand something, Mr. Morris, you just said. We know we're going to have future litigation. I mean I'm not asking for revelation of attorney-client privilege, but -- communications, but you kind of dangled it out there.

You're saying that the reorganized debtor intends to file litigation against HCRE because of what you think are breaches by it as manager of SE Multifamily of the existing agreement.

MR. MORRIS: The evidence is already in the record, Your Honor. We have -- Highland as a member of SE Multifamily has the contractual right to obtain access to inspect and copy -- those are the words, inspect and copy SEC *[sic]* Multifamily's books and records.

We made that request at the end of June. It's one of the exhibits that's attached that's in the record now. I made probably three different follow-up emails, and it's been completely ignored, okay.

HCRE is the manager of SE Multifamily, right. They're in control. They're the ones who dictate how the

accounting is done. They're the ones who dictate how distributions are made. They're the ones who dictate how tax forms are prepared. They have an obligation under the amended and restated agreement to cause SE Multifamily to prepare the tax returns. They're the ones who are in direct contact with Barker Vigotto.

There's a whole host of issues we're going to examine, but the one thing that I do know for certain, Your Honor, is that they are in breach of the agreement today because they have refused for three months now to give us what we're entitled to. And that is access to inspect and copy SE Multifamily's books and records.

So unless they agree to do that, and I mean pretty soon, we're not going to have any alternative. If you recall, Your Honor, Mr. Dondero's trust, the Dugaboy Trust, filed this valuation motion which we'll address in due course. I don't know where they got the number, but according to Mr. Dondero's trust, Highland's interest in SE Multifamily is worth $20 million. This is not a small asset. This is not harassment.

But they're not complying with their contractual obligation to give us access to inspect and copy SE Multifamily's books and records. For a $20-million asset where it's -- I mean they're conceding now that we're the owner of those membership interest. How can they deny us access?

And if they don't give us that access so that we can

verify the value of this asset, so that we can verify whether or not we've gotten the distributions that we're entitled to, so that we can verify that the profits and losses that have been allocated to Highland were actually proper and consistent with the agreement, I'm afraid that there will be further litigation, and that's why we need to -- we need to nail this down right now because I don't want to get a counterclaim that says we left the deal open to challenging Highland's interest in SE Multifamily. That door needs to close today.

THE COURT: Okay. All right. Well, I'm going to start out by saying we're in a very unusual procedural posture.

Before I forget, Mr. Gameros, I meant to mention this at the very beginning. The motion to withdraw the proof of claim of your client, you had an odd way of signing it. I wonder if this was a mistake or you always sign this way. You signed the pleading signature Charles W. Gameros, Jr., PC.

Is that -- was that inadvertent or do you always sign that way? I mean a lawyer's supposed to personally sign under Rule 11 a pleading. Was that just inadvertent or do you think that's fine?

MR. GAMEROS: I've used that signature block for over 20 years, and I've never -- no one has ever asked. I thought it was fine.

THE COURT: Okay. Well, no one's ever asked and you think it's fine. I think you need to go back and do some

research on that, okay. I'm not sure it's fine. I'm not sure it's fine.

I mean you would agree that you're personally bound under Rule 11 when you file a pleading, right?

MR. GAMEROS: Yes, Your Honor.

THE COURT: I mean I know it feels a little different if you're -- well, I don't know. You're not a -- you have a firm, Hoge & Gameros, L.L.P. I mean it wouldn't be appropriate for Mr. Morris to sign a pleading Pachulski Stang, right? He has to sign his name personally on a pleading, right?

MR. GAMEROS: Your Honor, I'll make that change.

THE COURT: Okay.

Well, so we're in an unusual procedural context. We I think all agree that Bankruptcy Rule 3006 is the applicable authority, and it provides that, you know, a creditor can't just withdraw a claim when there's been an objection filed to it. There has to be notice and an order from the Court.

And so we don't run into this situation very often, but I have seen it before. And as someone or both correctly noted, it is a rule that sort of goes to the integrity of the system. Filing a proof of claim is obviously a very significant act in the context of a bankruptcy case.

You file a proof of claim under penalty of perjury so it's a big deal from, you know, a criminal exposure standpoint

but it's also a big deal because we want to make sure only parties with legitimate claims are given a seat at the table, so to speak, in bankruptcy as far as, you know, their right to a distribution, their right to be heard in a case.

So, you know, that's the reason for the rule. We don't see it come into play very often, but it's there because we want to make sure that we protect the integrity of the bankruptcy process. And if someone files a proof of claim and it's pending and, you know, activity happens in the bankruptcy case as a result of it, that we don't just let a party say never mind.

So the Manchester case, which you both cited in your pleadings, has set forth fact-intensive factors -- fact-intensive inquiry. And, again, I'm just looking at HCRE's motion, Page 7. There was a chart and it sets forth the Manchester factors. Factor number one, diligence in bringing the motion to withdraw the proof of claim.

In Mr. Gameros' chart, his response to that factor is that HCRE brought its motion to withdraw immediately after conferring with debtor's counsel. I don't even know what that means, okay. But what I do know is in looking at diligence of bringing the motion, the proof of claim was filed April 8th, 2020. It was objected to, the proof of claim, July 30th, 2020. And then on August 12th, 2022, this motion to withdraw the proof of claim was filed.

So two years and one month after the objection was filed to the proof of claim HCRE withdraws it. So that doesn't seem very diligent. It's not diligent at all, to be honest.

Your second factor, you cited, Mr. Gameros, undue vexatiousness, and you say HCRE has not been vexatious in pursuing its proof of claim. And outside the motion to disqualify previous counsel, which is not substantive, everything in the matter has proceeded by agreement and there have been no hearings set or held.

Okay. Well, debtor has represented in its pleadings and today through counsel on the record that it has spent hundreds of thousands of dollars litigating this. It has mentioned that four depositions have been taken. It was Mr. Mark Patrick. It was the tax accounting firm. We had the B -- the entity -- BH Equities, LLC, their representative. And then Mr. Seery. So four depositions, and I'm told a lot of written discovery.

And on the day before the -- well, the day after, day or two after the Seery deposition, the motion to withdraw the proof of claim was filed after 5:00 in the evening on a Friday, August 12th, and I guess a couple of business days before the depositions were to occur of Mr. Dondero and the fellow, Mr. McGraner, and I feel like there was one other deposition. I'm losing track of those.

But --

THE CLERK: The 30(b)(6).

THE COURT: Oh, the 30(b)(6). The 30(b)(6) representative.

So on top of all of that, you know, Highland argues there was just simply no good-faith basis for the proof of claim. Proof of claim asserted the membership interest, Highland's 46.06 interest, set forth in the Multifamily LLC agreement were the result of mistake.

Mr. Dondero signed the agreement for both parties, HCRE and Highland. And then now the motion to withdraw says something to the effect of the anticipated issues have not materialized. So anyway, the undue vexatiousness factor I think weighs -- because of these factors I've mentioned, weighs in favor of there has been undue vexatiousness.

Factor number three, according to HCRE's motion to withdraw the proof of claim, is matter's progression including trial preparation. Again, four depositions, thousands of pages of written discovery. We were days away from the last depositions occurring, those of HCRE's potential witnesses and we have trials set. We have a trial set in November. So that factor, again, seems to weigh heavily in favor of Highland's objection here.

Duplication of expense of relitigation, here's why we got Mr. Dondero on the phone or wanted to have a witness with authority. Highland is saying we are concerned about

relitigation of this ownership interest issue. And as part of its argument, Highland has said we've got claims, we've got our own claims for breach of agreement and different things that are going to cause us to have to drill down on terms of the LLC agreement.

And we can't -- we don't want to face exposure on this issue of, well, you don't have the ownership interest or the rights you say you do, Highland. So, you know, if we could get ironclad language here of, you know, we waive the right, we agree that Highland has the 46.06 interest and we waive the right to challenge that, then I don't think we'd have to worry about relitigation of the issues in the proof of claim. But it feels like we had a little bit of reluctance to say it as forcefully as we would need to have it said to avoid relitigation.

Reason for dismissal, I don't know. I don't know what the reason for dismissal. Again, to quote HCRE's pleading on Page 7, the reason for dismissal is, "The operation of the company" -- I think that means SE Multifamily -- "during the case and the anticipated issues therewith have not materialized and NREP no longer desires to proceed in the matters raised in the proof of claim."

I mean that's just not in sync with the theory espoused in the proof of claim that we think there was a mistake made in the LLC agreement. So, again, looking at these

legal factors, I do not think that the correct result is to grant the motion to withdraw the proof of claim under Rule 3006 under the Manchester factors. I will throw in that I think there is potential for prejudice here of the debtor.

I mean not even considering that hundreds of thousands of dollars have been spent over two-plus years on this issue, you know, I remember very well the disqualifying motion. And I said Wick Phillips should be disqualified. I didn't shift fees because I just wasn't sure at the time that, frankly, HCRE should be imposed with the fees attributable to its lawyers, not recognizing the conflict of interest when they saw one. It was just a little fuzzy in my mind.

But I'm just letting you know that now that we are here many years later, many months later and we have all the sudden, okay, never mind, this is just a situation where I have some regrets I didn't shift fees, to be honest. But -- so the motion is denied. The depositions shall go forward. I'm not sure, you know, if the dates that have been proposed are still workable, but if someone wants to speak up now about those deposition dates to avoid an emergency hearing, I'm willing to hear that.

I think what I heard was, well, I don't know what -- have you talked about dates at all? Probably not, Mr. Morris, in light of this hearing today.

MR. MORRIS: We have not, Your Honor. But I do think

that Counsel and I can work that out. I'm not available until the week of the 26th. So it won't be early that week but sometime between let's say the 28th of September and the 7th of October, I'll be prepared to take these depositions. And I would respectfully request, and we can work with Ms. Ellison to try to find a trial date sometime the last week of October, first week of November so we can get this finished.

THE COURT: Okay. Did I dream up that there was a trial set already in November?

MR. MORRIS: You know what?

You know what, let's just keep that date, Your Honor. Let's just keep that date.

THE COURT: All right. Traci, are you still on the line? Can you confirm my memory? I thought we had a two-day trial set aside for this in November.

MS. ELLISON: Is this on the merits of HCRE's claims, Judge Jernigan? I have a note holding November 1 and 2.

THE COURT: Okay.

MR. MORRIS: Yeah.

THE COURT: So we'll go ahead and mark that down.

Now the last -- so you'll work on an a mutually agreeable date for these three remaining depositions sometime, you know, late September, early October. And I trust you will --

MR. MORRIS: Yeah. I would respectfully request that

Counsel just propose dates for the depositions. I'll wait to hear from him. But I think -- I'm representing to the Court that any time between September 28th and let's just give it two full weeks, October 12th. That's plenty of time in advance of the trial.

THE COURT: All right. Mr. Gameros, anything you want to add on that?

MR. GAMEROS: No, Your Honor. I'm sure we can work with Mr. Morris to get those scheduled.

THE COURT: All right. And here's actually the last thing I wanted to say.

You know, I had thought about, you know, waiting 24 hours to give you a ruling on this motion to withdraw the proof of claim and directing you all to kind of talk and see if maybe you could work out language, you know, without the pressure of the Court hovering over you that could make both of your clients satisfied.

I still encourage you to do that, but I'm going to pick on our U.S. Trustee. I see she's observing today, and I'm not going to ask you to say anything, Ms. Lambert. But if you all do agree, if you all in the next, you know, 24 hours come to some sort of agreement, I don't mean to be alarming, but I want it run by the U.S. Trustee because, you know, I've heard some things that have troubled me about the, you know, lack of good faith with regard to the proof of claim and, you know,

alleged gamesmanship.

And, you know, I talked earlier about this goes to the integrity of the system, you know, filing a proof of claim under penalty of perjury. Anyway, I'm feeling a little bit uncomfortable about signing off on an agreed order where there may be quid pro quos that went back and forth in connection with withdrawing a proof of claim. I mean at some point -- well, that's why we have scrutiny of these things under Rule 3006, right?

Again, there are integrity issues. And so I just -- you know, if you were to work out language, I want you to run it by Ms. Lambert and I want to hear that either she was okay with it or she wasn't okay with it or maybe she declines to comment. You know, I'm not going to tell her how to do her job, but I feel like that needs to happen, okay?

It's just something uncomfortable going on in my brain about, you know, again a proof of claim being on file two, almost two and a half years and then, you know, okay, never mind, okay, I agree to never mind as long as you agree to XYZ.

And I have no idea what's in the Seery transcript. I don't have it before me. But, you know, I don't even know what that's all about. I don't even know if I care what that's all about. I just know if there are quid pro quos I feel like, you know, maybe I need to have the U.S. Trustee, you know, not per

se signing off on any agreed order but at least kind of looking at it and telling me either U.S. Trustee's fine with it, U.S. Trustee is not fine with it, or U.S. Trustee declines to comment. Just I know that I've gone through the drill, okay?

So just letting you know I am still, you know, all open to an agreed resolution of this, okay. But we're going forward as if you can't get there, okay?

All right. I'll look for -- what am I going to look for? I'm going to look for an order denying the motion to withdraw proof of claim. I'm going to look for an order granting the -- well, an order resolving the objection to motion to quash and cross-motion for subpoenas saying that these three witnesses are going to appear at a mutually agreeable time either late September or early October.

All right. We're adjourned.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 11:35 a.m.)

* * * * *

C E R T I F I C A T I O N

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS DATE: September 13, 2022

EXHIBIT 65

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Wednesday, December 16, 2020
	1:30 p.m. Docket
Debtor.	
	- MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS [1528]
	- DEBTOR'S EMERGENCY MOTION TO QUASH SUBPOENA AND FOR ENTRY OF PROTECTIVE ORDER [1564, 1565]
	- JAMES DONDERO'S MOTION FOR ENTRY OF ORDER REQUIRING NOTICE AND HEARING [1439]

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

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

DALLAS, TEXAS - DECEMBER 16, 2020 - 1:35 P.M.

THE COURT: All right. This is Judge Jernigan. We have settings in Highland. We have -- I guess the very first thing that we had set today was a motion of Dondero, Mr. Dondero wanting some sort of revised procedures for "future estate transactions occurring outside the ordinary course of business." Then, related to that, we received the other day -- I'm not showing it on the calendar, I'm not sure if that means it's moot now or not, but we had a motion for protective order and a motion to quash with regard to certain depositions that Mr. Dondero wanted in connection with his motion. The Debtor filed that motion to quash. It was to quash a deposition of Mr. Dubel, Mr. Nelms, Mr. Sevilla, and Mr. Caruso. And then we have the CLO Motion, what I'm calling the CLO Motion, of --

(Interruption.)

THE COURT: Okay. Let's --

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. The first two motions have been resolved. And after Your Honor takes appearances, I'm happy to inform the Court of the proposed resolution, and there's an agreed order that we would upload after the hearing.

THE COURT: Okay. Well, that is certainly music to my ears. All right. So I was just trying to lay out the program for what I thought was set, potentially three motions,

one of which was a deposition dispute.

All right. So let's go ahead and get appearances. Mr. Pomerantz, you're obviously appearing for the Debtor team.

MR. POMERANTZ: Yes. Good morning, Your Honor. Or good afternoon, Your Honor. Jeff Pomerantz; Pachulski Stang Ziehl & Jones. Also on the video with me today are John Morris and Greg Demo. They will be handling the CLO Motion, and I will be reporting to the Court on the resolution of Mr. Dondero's motion and our corollary discovery motions.

THE COURT: Okay. All right. Well, why don't I take an appearance from Mr. Dondero next. Mr. Lynn, I see you there.

MR. LYNN: Yes, Your Honor. I am here with Bryan Assink, who will replace me after the preliminaries when our business is done. Other than concurring with Mr. Pomerantz, I wanted to advise Your Honor that in the last 30 minutes we filed an additional motion where we're seeking a clarification with respect to the temporary restraining order that the Court entered last week.

THE COURT: All right. Well, I did see an email from my courtroom deputy right before walking in about that motion, and so that's why I was a little surprised and said "Music to my ears" that there was an agreed order on the Dondero motions. But I'll get the details --

MR. LYNN: Well, we're --

THE COURT: I'll get the details about that in a minute. Let me go ahead and get the other appearances.

For the Movants on what I've called the CLO Motion, who do we have appearing?

MR. WRIGHT: Good afternoon, Your Honor. It's James Wright of K&L Gates for the -- I guess I'll call them the Movant for this motion.

THE COURT: Yes. Sometimes you're referred to as the Advisors and the Funds and -- but Movants on Docket Entry 1528.

All right. For the Committee, I know you have weighed in on a couple of these motions. Who do we have?

MR. CLEMENTE: Good afternoon, Your Honor. Matt Clemente with Sidley Austin on behalf of the Committee.

THE COURT: All right. Well, we have a lot of folks on the phone. I think I've covered everybody who filed a pleading for today. Is there anyone else who would like to appear? I'd really like to restrict it only to those who have filed pleadings today.

MS. MATSUMURA: This is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. I don't expect I'll be weighing in today, but there are a couple issues that I may say a sentence on, so I want to go ahead and make my appearance now.

THE COURT: All right. Thank you. Anyone else?

MR. BAIN: Yes, Your Honor. Joseph Bain; Jones Walker; on behalf of the CLO Issuers.

THE COURT: All right.

MR. BAIN: And Your Honor, if we may make certain comments at the requisite time, we'd appreciate it.

THE COURT: All right. Thank you. Anyone else?

All right. Well, Mr. Pomerantz, let's hear about the agreements you have on the Dondero-related motions.

MR. POMERANTZ: Happy to, Your Honor. And yes, Mr. Lynn is correct, we saw also an emergency motion that came through that I'll have a couple of comments at the end of my presentation.

So, as I mentioned before, Your Honor, I'm pleased to report that with respect to the two motions that Your Honor scheduled for today's hearing, we have an agreement with Mr. Dondero. One was the motion of Mr. Dondero requiring transactions out of the ordinary course to be brought before this Court. The second was the Debtor's motion to quash a series of subpoenas that had been issued in the last two days, requiring board members and others to testify.

As part of the agreement, we have agreed with Mr. Dondero that his motion, which is presently set for today, shall be continued to January 4th, which is the same date set as the continued hearing on the preliminary injunction relating to the TRO that Your Honor had entered last week.

As part of that agreement, the Debtor has agreed that it will provide Mr. Dondero with three business days' notice before selling any non-security assets from any managed funds accounts through and including January 13th, which is the date set for confirmation.

While, as the Court is aware, the Debtor doesn't believe that any notice, opportunity for hearing, or an order from the Court is required in connection with such transactions, as the Debtor does not have any current plans to sell non-security assets from managed funds before confirmation, it was willing to agree to the notice requirement as essentially a way of resolving the motion before Your Honor today and continuing until the 4th.

As part of the agreement as well, Your Honor, the parties have agreed that there will be no further discovery in connection with the motion that is set. That'll be no additional discovery by Mr. Dondero, so he is withdrawing the subpoenas as it relates to this motion, and there will be no further discovery as -- by the Debtor. As Your Honor, I think, is aware, there were depositions conducted of both Mr. Seery and Mr. Dondero on Monday in connection with this motion, but the discovery will not happen over the next couple of weeks.

Mr. Dondero wanted to make sure, and the Debtor didn't have any opposition, that that agreement with respect to no

discovery only relates to the pending motion before the Court. And in connection with any other matters relating to this bankruptcy case, Mr. Dondero would reserve the right to pursue discovery, and of course the Debtors would reserve the right to challenge discovery if we believed it was inappropriate or unduly burdensome.

With respect to the motion that was just filed, Your Honor, we had a chance to briefly review it. We haven't had a chance to discuss it with the board. In any event, we don't think there's an emergency. Mr. Dondero wants the opportunity to approach and communicate with the board. I've told Mr. Lynn that communications regarding the plan are to go through Mr. Seery. Mr. Seery is the Debtor's chief executive officer. He's the chief restructuring officer. And at this point, the board doesn't see a reason or have a desire to meet with Mr. Dondero to talk about his plan, but, again, would be happy to receive any written communications that Mr. Dondero has.

Mr. Dondero has sought to modify the TRO to allow him to speak to the board. Again, if the board agreed to speak with Mr. Dondero, that wouldn't violate the TRO, provided that counsel would be present. But at this point, the board has decided that it would be inappropriate and not a good use of anyone's time to have that communication and that Mr. Dondero should continue to communicate through Mr. Seery, the Debtor's chief executive officer.

If Your Honor, after reading the motion and hearing my comments, and I'm sure Judge Lynn's comments that he will make to Your Honor, Your Honor wants to set it for hearing, we would submit, Your Honor, there's no emergency and that a hearing could be set next week, but we would think Your Honor might be able to dispose of the motion just on the papers and the limited argument that would go on today.

THE COURT: All right.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: All right. Mr. Lynn, first, could you confirm the terms of the agreed order that Mr. Pomerantz just announced are consistent with what you and your client believed was negotiated?

THE CLERK: He's on mute.

THE COURT: You're on mute, sir.

MR. LYNN: Mr. Pomerantz has correctly stated the agreement of the parties. I am pleased to advise Your Honor that I expect that we will withdraw the motion that is presently pending to be heard on January 4th, since all we were asking for was notice until confirmation date. If those sales are going to take place before then, we don't have a problem any longer with the pre-confirmation activity of Mr. Seery.

With regard to the motion that we filed requesting that the temporary restraining order be modified, we would point

out, respectfully, that the independent board is the board of directors of Strand Advisors. Strand Advisors belongs to Mr. Dondero. It is not unreasonable for the sole stockholder of Strand Advisors to ask the board questions or present thoughts to the board or ask its advice. Mr. Seery, on the other hand, while being a member of the board of Strand, is the chief executive officer and the chief restructuring officer of Highland, which is not the same as Strand.

Furthermore, Your Honor, Mr. Dondero has been attempting for several months to negotiate an arrangement by which the Debtor can continue as a going concern. It is his desire to discuss further with the board as a whole what he can do in that regard. I think the Court, by directing him originally to participate in the mediation that took place in September, expected him to do so. He has attempted to do so. And while he has not gotten a response from the Creditors' Committee that is definitive, he has at least caught the interest of Mr. Seery, though that interest may have died for a variety of reasons in recent weeks.

And by the way, next week is fine with us. We're not in a hurry beyond that if the Court feels further discussion would be useful.

MR. POMERANTZ: Your Honor, just a couple of points in response.

Mr. Dondero has the right to request an audience with the

board. He has requested the audience with the board. The board has considered it and decided not to communicate in that fashion with Mr. Dondero at this time. There is nothing that Your Honor can do in the TRO that would change that, other than ordering the board to speak with Mr. Dondero, which I highly doubt Your Honor would do.

Having said that, this board in general and Mr. Seery in particular have been very supportive of an overall resolution to this case, not only with the creditors, but with Mr. Dondero. Mr. Seery has spent tens if not hundreds of hours over the last several months working with Mr. Dondero to try to get him in a position to present something that would have traction with the Unsecured Creditors. Unfortunately, that hasn't occurred. We understand there have been communications between Mr. Lynn and Mr. Clemente. And if there is any hope of a plan and any traction with the creditors, this Debtor in general and Mr. Seery in particular stands ready, willing, and able to do anything within the Debtor's power to help that out.

So, it's not really the Debtor standing in the way. It's an economic agreement ultimately that needs to be reached with Mr. Clemente and his constituents and Mr. Lynn. And if that can be reached, we will be the first to jump on that bandwagon and do everything humanly possible to have that occur.

Thank you, Your Honor.

THE COURT: All right. Well, again, I've not read the motion. I've just seen an email that I have this motion. I'm a little bit confused. I don't want to spend too long on this because we have another motion to get to. But I'm a little bit confused on how Dondero wants the TRO to be modified. If he has the right already to request an audience of the board, what is it that is problematic about the TRO that he wants modified?

THE CLERK: He's on mute.

THE COURT: You're on mute.

MR. LYNN: Sorry, Your Honor. As I told you before, you must forgive me, my command of technology is not great.

In response, I would say that I question whether it is appropriate, in advance of a meeting with the board of his company, that what he wants to talk about should be screened. And that is what has occurred in our effort to meet by telephone with the board.

Any such meeting would, of course, be subject to the restraints that are included in the temporary restraining order, in that both Mr. Pomerantz or his designee and I would participate in any such discussion. I respectfully submit Strand is his. Nobody may like that, but it is his, and he ought to be able to talk to his own board.

THE COURT: Is this about having a conversation without the Committee's involvement? I just don't -- hmm. I

just need to see the motion.

Mr. Clemente, anything you want to add at this juncture? Have you even reviewed the motion yet?

MR. CLEMENTE: Your Honor, I apologize. I haven't actually even seen the motion. And so I have no comment on it, Your Honor. I apologize for not having been able to look at it.

THE COURT: Okay. Well, what about the agreed order that's been announced? Any comment on that?

MR. CLEMENTE: Your Honor, we support the resolution that Mr. Pomerantz announced on the record.

THE COURT: Okay. All right. Well, I assume there's nothing further, then, on the Dondero motions that were scheduled today?

All right. So I will happily accept the agreed order that has been announced. For now, we will continue the Dondero motion that was Docket Entry No. 1439 to January 4th, when the preliminary injunction hearing is set. And we -- I understand there are going to be no more discovery requests in connection with these matters that were set today.

And I will review the motion that Mr. Dondero has filed shortly before today's hearing in chambers later, and I will have my courtroom deputy communicate to the lawyers whether I see fit to set it for an emergency hearing next week or rule on the pleadings or set it for January 4th. Those are, I

guess, the three possibilities I can think of that I might decide upon.

So, again, I'm not making any ruling at all on a motion I haven't read yet. So I'll -- the courtroom deputy will let you all know, if not later today, tomorrow. Probably tomorrow, because I have a confirmation hearing set later today in another case.

All right. So, thank you all for working these issues out. And Mr. Pomerantz, Mr. Dondero -- or, excuse me, Mr. Lynn, anything further on the Dondero disputes?

MR. POMERANTZ: Nothing from the Debtor, Your Honor.

MR. LYNN: Your Honor, nothing from Mr. Dondero. May I be excused?

THE COURT: Is anyone anticipating needing Mr. Dondero's counsel for the other matter? All right. If not, then I certainly have no problem with you dropping off the line, Mr. Lynn. Thank you.

MR. LYNN: Thank you, Your Honor.

THE COURT: Okay. All right. So let's turn next to the CLO Motion. I take it there are no agreements on this one?

MR. POMERANTZ: There are not, Your Honor.

MR. WRIGHT: There are not, Your Honor. I can confirm that.

THE COURT: All right. Mr. Wright, do you have

anything you want to say as far as an opening statement before we go to the evidence?

MR. WRIGHT: I don't, Your Honor. My intention, if it's okay with you, you asked me to bring a witness, so I do have Mr. Norris from my client, and I was going to just remind the Court who I am and state the name of all of my Movants, and then I was going to move directly to put him on the stand and go through a brief direct.

THE COURT: All right. I think I heard Mr. Morris is going to handle this phase of the hearing.

MR. DEMO: And Your Honor, this is Greg Demo from Pachulski on behalf of the Debtor.

THE COURT: Oh, okay.

MR. DEMO: We would like to make a brief opening statement before we have witnesses, if that's all right with Your Honor.

THE COURT: All right. I'm fine with that. So, --

MR. DEMO: All right.

THE COURT: -- go ahead.

MR. DEMO: All right. Well, thank you, Your Honor. Again, Greg Demo; Pachulski Stang; on behalf of the Debtor.

We are here today on what really amounts to the third of three motions that deal with Mr. Dondero's attempts, either directly or through a proxy, to transfer control away from the Debtor and back to Mr. Dondero.

The current motion is filed by NexPoint Capital and Highland Capital Management Fund Advisors and three of their managed funds: Highland Income Fund, NexPoint Capital, and NexPoint Strategic Opportunities Funds.

Mr. Dondero owns and controls NexPoint Capital and Highland Capital Management Fund Advisors. While both NexPoint Capital and Highland Capital Management Fund Advisors are governed by boards, the boards have no investment authority with respect to the funds they manage, nor was the boards' approval necessary to file the motion, or obtained.

Mr. Dondero is the sole portfolio manager for NexPoint Strategic Opportunities Fund and Highland Income Fund. Mr. Dondero is one of three portfolio managers for NexPoint Capital. Mr. Dondero's decisions are not subject to oversight.

The Movants disclosed these facts in their recent SEC filings, and there can be no dispute that Mr. Dondero is the controlling figure behind the Movants in the relief being sought in the motion which seeks to impede the Debtor's efforts to exercise its rights as a CLO manager.

The fact that this motion was even filed is quite surprising, since on December 7th the Debtor filed a complaint and TRO based upon Mr. Dondero's unlawful efforts to frustrate the Debtor's efforts to sell assets from the very CLOs that are the subject of this motion.

The Court granted the TRO on December 10th. Mr. Dondero also filed a motion seeking similar relief in November, which has now been adjourned to January 4th.

The Movants are essentially now seeking an order from this Court enjoining the Debtor from exercising its rights as a CLO manager and requiring the Debtor to seek the Movants' and Mr. Dondero's permission to fulfill its obligations as a manager for the CLOs.

The Movants, however, do not come right out and say this, and instead couch the motion as seeking to simply pause the CLOs' asset sales while the Movants and the Debtor engage in discussions regarding the future of the CLOs' management.

In the motion, the Movants also argue the Debtor has made decisions detrimental to the interests of the preference shareholders because the Debtor is trying to monetize its assets in a manner inconsistent with the preference shares' objectives.

The Movants simply mischaracterize the facts, the parties' respective rights under contracts, and the law.

First, to the extent the Movants hold interests, they hold only preference shares in the CLOs and are minority investors in the preference shares of 12 of the 15 CLOs at issue. In one third of the CLOs, the Movants' interests sit behind senior debt which must be paid first.

Notably, Your Honor, no other investors in the CLOs are

here or have expressed support for the Movants' position.

Second, the Movants simply have no right under the contracts governing the CLOs to the relief they are requesting. The CLOs are governed by a series of agreements which were agreed to long ago and dictate the rights of all investors of the CLOs. The enforceability of those agreements is relied on by all investors, not just the Movants.

Under these agreements, investment discretion is given to the CLOs' manager -- in this case, the Debtor -- and no investor has the right to direct the CLO manager. The manager was chosen to manage the CLOs' assets. No individual investor was chosen to manage the CLOs' assets.

Simply said, there will be no evidence that the Movants have the right to do what they're trying to do, and there will be no evidence that the Movants' preferences with respect to the CLOs' assets is in line with that of the other investors in the CLOs.

Under the relevant agreements, if an investor is not happy with a manager's performance, the investor's rights are generally limited to replacing the manager. The investors here -- excuse me, the Movants here -- have not done that and cannot do that. Under the agreements, replacement requires at least the majority of the preference shares that are not affiliates of the managers. In 12 of the 15 CLOs, the Movants hold a substantial minority interest position. They are not

the majority. In the three CLOs in which they are the majority, the Movants still cannot replace the Debtor as the investment manager because they are the Debtor's affiliates.

It is indisputable that, prior to January 9th, when Mr. Dondero was removed from control of the Debtor, that the Debtor, NexPoint Advisors, Highland Capital Management Fund Advisors, and the three funds were the Debtor's affiliates because of Mr. Dondero's common control.

After January 9th, where the Court removed Mr. Dondero from control of the Debtor, the Debtor is arguably, under the documents, not an affiliate. However, Your Honor, the Movants have disclosed in their recent proxy statements filed in 2020 that they still consider themselves the Debtor's affiliate, and they should be bound by that statement. The Movants, by virtue of Mr. Dondero's being removed from control of the Debtor, should not be able to use that removal to reassert control over the CLOs that were taken away from Mr. Dondero when he was removed in January 2020.

The Debtor believes that additional briefing may be needed on this issue, and that a ruling specifically on this issue and the parties' relative rights under the CLO management agreements may be needed. The Debtor reserves its right to brief this issue and to bring it before this Court, either as a declaratory judgment or any other procedurally-appropriate motion.

Because the Debtor -- excuse me. The Movants have no right to the relief requested. They argue that the relief is justified because of the mismatch between the investors' timelines and the Movants'. This is not true. The Movants cite to three transactions to justify their statement in the motion: SSP, OmniMax, and certain recent transactions.

The recent transactions were the attempted sales of two public equities immediately before Thanksgiving that Mr. Dondero interfered with. You'll hear testimony from Mr. Seery about each of these transactions and how each was in the best interest of the CLOs.

First, SSP. SSP is a steel business that was suffering for a number of reasons. The Debtor's investment team believed SSP should be sold since 2019. The Debtor received multiple offers for SSP, the Debtor evaluated these offers, and the Debtor choose the one that was the best. The SSP sale closed in early November.

Notably, Your Honor, none of the CLOs held an equity interest in SSP, its parent, or in Trussway. Instead, they held debt, and they got exactly what they bargained for, repayment of their debt obligations in full.

OmniMax, Your Honor, is the second one. It is a fabricator of building materials. The CLOs and the Movants held an interest in OmniMax debt which they have been trying to refinance or equitize since 2019. That deal was intended

to include the Movants, but instead of working with the Debtor, Mr. Dondero held out and used the threat of litigation against OmniMax to secure a higher price for the Movants, to the detriment of the CLOs.

As Mr. Seery will testify, these two transactions were all about maximizing value and have nothing to do with investment timelines.

Finally, Your Honor, the Movants reference the Thanksgiving transactions. These transactions were discussed in the context of Mr. Dondero's TRO. Mr. Seery directed Debtor personnel, on the advice of his investment team, to sell these securities. Mr. Dondero blocked those trades. Now the Movants argue that the reason those trades were blocked was because of a mismatch between the Movants' and the Debtor's investment timelines. That is not the case. Mr. Seery will testify as to these trades. The Debtor is an investment manager and appreciates that its decisions with respect to how it manages its assets are -- is a judgment call. The evidence, however, will show that the Debtor at all times exercised that judgment in good faith based on all available information.

The Movants may disagree with the Debtor's judgment, Your Honor, but that is irrelevant. The Movants have no right to interfere with the Debtor's management of the CLOs. There is simply no statutory or contractual basis for this, not under

Section 363 and not under the CLO agreements.

Finally, Your Honor, -- I guess not finally. There's one more point I want to make. But Your Honor, this -- what we're here on today is notably similar to the Acis bankruptcy that Your Honor noted last time we were here last week. In that bankruptcy, HCLOF tried to direct the collateral manager to take certain actions that HCLOF thought were in the best interest of the CLOs. In this case, the Movants, through Mr. Dondero, are trying to file an action that functionally seeks to direct the Debtor to take interests that the Movants believe are in their best interest. There is substantial overlap between the litigation in Acis and the litigation here.

Finally, Your Honor, the Debtor has been in discussions with the CLOs' counsel on this issue. And the Debtor has been informed that the CLOs' position is that the Debtor's ability to operate under the management agreements should not be interfered with, not by the Movants or not by any other party.

Thank you, Your Honor. With that, I will turn it over to Mr. Norris. Or, I'm sorry, Mr. Wright.

THE COURT: All right. Mr. Wright, you may call your witness.

MR. WRIGHT: All right, Your Honor. Dustin Norris should be -- should be dialed in and should be available on screens.

THE COURT: Okay. I'm going to --

MR. WRIGHT: I'll pause and have him confirm that.

THE COURT: I'm going to ask you, Mr. Wright, to speak up or closer to your device. I didn't hear the name of your witness.

MR. WRIGHT: Sure. Sorry. It's Dustin Norris. I -- last time, you were having trouble hearing me, and so I'm trying a different device this time. I actually followed the instructions that I found very helpful, so I'm trying my phone in hopes that it will work better.

THE COURT: All right.

MR. WRIGHT: But, yeah, it's Dustin Norris. D-U-S-T-I-N, N-O-R-R -- N-O-R-R-I-S.

THE COURT: All right. Mr. Norris, can you say "Testing one two" so we pick up your video?

MR. NORRIS: Testing one two.

THE COURT: All right.

MR. NORRIS: Testing one two.

THE COURT: All right. Please raise your right hand.

DUSTIN NORRIS, MOVANTS' WITNESS, SWORN

THE COURT: All right. Mr. Wright, you may proceed.

MR. WRIGHT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Mr. Norris, you're employed by NexPoint Advisors?

A I am. That's correct.
Q And what is your title and role there?
A Yeah. I am the executive vice president of NexPoint Advisors. In that role, I oversee business development, marketing, sales, investor relations. And as far as the funds advised by the advisor, I'm the liaison with the independent board on the business side.
Q Thank you. Do you also have a role for Highland Capital Management Fund Advisors?
A I do. I'm also the same executive vice president and fulfill that same role as it pertains to business development, sales, investor relations. And in both, I'm also working on product development. So, launching, developing new products and investment funds.
Q Do you also have a role for Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.?
A I do. I'm also executive vice president for each of those funds.
Q Thank you. Have you ever served on the boards of these three funds?
A I have. I've served as the interested trustee, sole interested trustee for each of these funds. I'm no longer the board member or interested trustee, but still serve as an officer, executive vice president, for each fund.
Q At times, I'm going to refer to NexPoint Advisors, LP and

Highland Capital Management Fund Advisors, LP simply as the Advisors, to avoid having to keep saying their long names. And similarly with the three funds that are part of the motion, I may just call them the Funds.

Can you explain the relationship between the Advisors and the Funds, briefly?

A Yeah. So, each of these are investment companies that are registered under the Investment Company Act of 1940. So, with that comes a unique relationship between an investment advisor and the funds themselves. The Funds don't have employees. They rely on the investment advisor and investment advisor employees. And between the Funds and the Advisors is an investment advisory agreement. And the Funds themselves are also overseen by an independent board, and that's by statute by the 1940 Act.

Q Okay. And just to be clear, when you said that these are -- entities are investment companies, you meant that the three Funds are investment companies?

A Correct. Correct. The three Funds are investment companies. The investment advisors are not investment companies.

Q Thank you. Can you explain the role of the board for the Funds?

A Yeah. So, as prescribed by the Investment Company Act of 1940, there are certain obligations related to an investment

company, and one of those is they must be overseen by an independent board. And the independent board has a responsibility to oversee the -- certain material agreements, including the advisory agreement. And we meet regularly with the boards. They overseas certain processes and, again, all material contracts. And the board is, by Section 15(c) of the 1940 Act, required by law to annually review the capabilities of the Advisor and to either approve or reject the advisory contracts. So, each year, those contracts are renewed by the independent board.

There are certain obligations of the Fund and operations that are delegated responsibility to the investment advisors. That includes portfolio management and investment decisions. But all those are overseen by the board.

Q Okay. And are the boards involved in the day-to-day operations of the Funds?

A They're not.

Q Okay. And do you know who the members of the boards of these three Funds are?

A I do.

Q Could you share that with us?

A Yeah. So, the -- there is one interested trustee of each board, and that's John Honis. And then for the Highland Income Fund and the NexPoint Strategic Opportunities Fund -- sorry, for NexPoint -- for Highland Income Fund and NexPoint

Capital, we have the same three disinterested or independent trustees, and that's Bryan Ward, Dr. Bob Froehlich, and Ethan Powell. And for NexPoint Strategic Opportunities Fund, we have the same four trustees, one interested, three independent, but there's another fourth independent trustee, Ed Constantino.

Q And when you refer to independent trustees, do you mean independent for purposes of the Investment Company Act of 1940, as amended?

A That's correct. They, by statute, they are independent trustees. They also have an independent legal counsel. Stacy Louizos represents them from Blank Rome. And also two of these Funds are listed on the New York Stock Exchange, and the New York Stock Exchange has various independence requirements that each independent director has met.

Q Thank you. And which are the two Funds that are listed on NYSE?

A The Highland Income Fund and the NexPoint Strategic Opportunities Fund are both NYSE-listed.

Q And I know you probably haven't memorized everybody who invests in the Funds, but can you give us a general idea of who invests in these Funds?

A Certainly. I definitely have not memorized them. There are thousands of individual investors in each of these Funds. Part of my role overseeing investor relations and sales, I do

talk to a lot of those investors. But the majority of the investors in each of these Funds are individual investors.

As '40 Act Funds, almost anybody with a brokerage account can buy them. They have tickers, particularly the Funds that are listed. Closed-end funds. And so, with that, it is mom-and-pop investors. It's retail investors, including myself. I've allocated my 401(k) to these funds, the majority of my 401(k) to these funds. But there are also institutional investors. There's hedge funds. There's ETFs. There are large high-net-worth individuals. But the majority of it is individual investors that have invested through their brokerage firms, be it Wells Fargo, Morgan Stanley, or Cetera. These are -- these are -- these are the individual investors.

Q Thank you. Does Mr. Dondero have investments in the Funds? Do you know?

A He does. He's invested in each of the Funds.

Q Does he have a majority investment in any of the Funds?

A He does not have a majority investment in any of the Funds.

Q Thank you. Does Mr. Dondero have a control relationship with the two Advisors?

A Yes. He does. With the Advisors.

Q And does he have a control relationship with the Funds?

A As it pertains to portfolio management, he is a portfolio manager of each Fund. But as discussed, as I mentioned, the

independent board on an annual basis has the ability to terminate or renew our advisory contracts, and that -- that dynamic removes the control, overall control, of the Funds in that regard.

Q Are you familiar with the motion that the Court I think has accurately referred to as the CLO Motion that was filed by the two Advisors and the three Funds?

A Yes. I am familiar with it.

Q And I'm going to ask you a question now that I think is of interest to the Court, based on the last time I was in front of Judge Jernigan. Were any employees of the Debtor involved in deciding to bring this motion or in preparing the motion?

A No. None of the HCMLP employees, to my knowledge, were involved in preparing or deciding to bring the motion.

Q Okay. And you investigated who was involved in preparing the motion, so your knowledge is pretty good on this point?

A Correct. I have. And none were involved, based on that investigation.

Q (garbled) involved in deciding to bring a motion, preparing it, other than outside counsel and my firm?

A Yeah. So, the initial cause for concern was raised by Mr. Dondero himself to our legal -- internal legal team and compliance team. And working together with them, myself, and outside counsel, and senior management of Highland Capital Management Fund Advisors, including Joe Sowin, we prepared the

order. Or, sorry, not the order, the motion.
Q All right. Thank you. Were the boards of the three Funds involved at all with bringing the motion?
A They were not involved in the preparation of the motion itself. They were aware and supportive, but they did not prepare the motion.
Q You provided a (audio gap), correct?
A Sorry. You did cut out there. I didn't hear the question.
Q I'll try again. You provided a declaration (garbled) motion, correct?
A I did, yes.
Q And there are two exhibits to your declaration. There's an Exhibit A and an Exhibit B.
A Correct.
Q Exhibit A, does this reflect the current repayment status of the various CLOs as we -- as you understand it to be as of December 1st?
A Yes, it does.
Q And does Exhibit (garbled) of the three Funds --
THE COURT: Okay. Mr. --
BY MR. WRIGHT:
Q -- and the various CLOs, --
THE COURT: Mr. Wright?
BY MR. WRIGHT:

Q -- as you understand it?

THE COURT: Mr. Wright, time out. Two things. First, I don't know what you can do to improve --

MR. WRIGHT: Sure.

THE COURT: -- your connection, but you're occasionally breaking up a little.

But second, can we be clear for myself, the record, everyone else, what you're referring to right now? We have an Advis... your witness and exhibit list is at Docket 1573. Is that what I should be looking at first?

MR. WRIGHT: Yes, Your Honor. The declaration of Mr. Norris. It's Docket 1522-1. And it's on our exhibit list. It may be the only exhibit on our exhibit list, frankly.

THE COURT: Okay. So you're talking about his declaration now, not the witness and exhibit list with the attachments to it? Actually, it is attached here. Exhibit A. Okay. I'm there. I went to Exhibit A in your attachments to your exhibit list at 1573.

All right. Let's try again with your question you just asked.

MR. WRIGHT: Sure.

BY MR. WRIGHT:

Q So, Mr. Norris, Exhibit A, this reflects the current repayment status of the CLOs that are the subject of the motion as of December 1. Correct?

A Correct.

Q And then --

MR. WRIGHT: Your Honor, if you turn to Exhibit B, which is just a couple pages forward.

MR. MORRIS: Your Honor, I would ask that this be put up on the screen, if possible.

THE COURT: Yes. Can you do that, please?

MR. WRIGHT: I'm sorry. I couldn't hear that, John.

THE COURT: He asked if you could --

MR. MORRIS: I would --

THE COURT: -- share your screen. Can you share your screen as to what you're looking at?

MR. WRIGHT: Can I share my screen? Last time I was using a computer and you were having trouble hearing me, so this time I'm doing it on my phone. So my phone, no, I don't have this on my phone to share my screen that way. It's Docket 1522-1, and it's the only exhibit that was on our exhibit list.

MR. MORRIS: No objection, Your Honor.

MR. WRIGHT: All it shows is the holdings in Funds in the CLOs. That's all it is.

MR. MORRIS: No objection, Your Honor.

THE COURT: Okay.

MR. NORRIS: I'm sorry, John. I didn't hear.

THE COURT: Give me a minute, because I was at 1573,

your witness and exhibit list.

(Pause.)

THE COURT: Okay. That's not the correct docket number.

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: If I may, it's John -- it's John Morris. It's Docket No. 1528. And the declaration can be found at Page 12 of 26.

MR. WRIGHT: Thank you.

THE COURT: 1528?

MR. WRIGHT: That's bizarre, because I have a printout of it and it says Docket 1522-1.

THE COURT: Okay. 1528 is the -- the actual motion we've set for hearing.

MR. MORRIS: And it's attached to that, yes. If you -- if you go to PDF Page 12, it's the first page of the declaration.

THE COURT: Okay. I'm there now. Okay. So we're on that declaration. And then you were having the witness look first at Exhibit A to that declaration. And then where are you having him look next? Exhibit B, which is entitled "Holdings of Preferred Shares in CLOs"?

MR. WRIGHT: Exhibit B, Your Honor.

THE COURT: Okay. Continue.

MR. WRIGHT: (garbled) I think some of the exhibits that I have had the wrong docket number printed on the top, and I --

BY MR. WRIGHT:

Q Exhibit B. So, Mr. Norris, Exhibit B to your declaration shows the holdings of the preference shares of the Funds in the various CLOs that are the subject of the motion, correct?

A That's correct. One clarification. It shows the percentage ownership of each of those preference share tranches that each Fund owns.

Q Thank you. Mr. Norris, do the three Funds have a date by which they have to liquidate their investments?

A Sorry, you did skip out there. If you could you repeat the question. I apologize.

Q It's frustrating. Do the three Funds have a date by which they must liquidate their investments?

A No. They do not.

Q Okay. Can you briefly explain why the Advisors and the Funds brought this motion?

A Yeah. The Advisors and the Funds were concerned with certain transactions, as described in the motion. As preference share owners, we own the majority or a substantial portion of the economics of most of these CLOs, and in three instances the majority of the economic benefit. And there was concern with the way that the sales were executed. And so,

with that, we're simply asking for a temporary relief in order to benefit and to maximize the recovery for our preference shares that we own.

Q Thank you.

MR. WRIGHT: All right, Your Honor. I have no further questions for Mr. Norris, although I guess I reserve the right to redirect.

THE COURT: All right. Cross-examination?

MR. MORRIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Norris. Can you hear me?

A I can. Thank you, Mr. Morris.

Q All right. I'm going to go into a little bit more detail about some of the topics that you discussed. To be clear here, there are five moving parties; is that right?

A That's correct. The two Advisors and the three Funds.

Q And one of the advisory firms is Highland Capital Management Fund Advisors, LP; is that right?

A That's correct.

Q And I'll refer to that as Fund Advisors; is that okay?

A That's great.

Q James Dondero and Mark Okada are the beneficial owners of Fund Advisors, correct?

A That is my understanding, yes.

Q And your understanding is that Mr. Dondero controls Fund Advisors, correct?
A That's correct.
Q And the other advisory firm that brought the motion is NexPoint Advisors, LP; is that right?
A That is correct.
Q And Mr. Dondero is the beneficial owner of NexPoint; is that right?
A A family trust where Jim is the sole beneficiary, I believe, controls or owns NexPoint Advisors.
Q Okay. And Mr. Dondero --
A Or 99.9 percent of NexPoint Advisors.
Q Thank you for the clarification. Mr. Dondero controls NexPoint; is that right?
A Correct.
Q All right. And I'm going to refer to Fund Advisors and NexPoint as the Advisors going forward; is that fair?
A That's fair.
Q Each of the Advisors manages certain funds; is that right?
A That is correct.
Q And three of those funds that are managed by the Advisors are the Movants on this motion, correct?
A Correct.
Q All right. The Advisors caused these three Funds to invest in CLOs that are managed by the Debtor; is that right?

A The portfolio managers working for the Advisors did. That's correct.
Q And Mr. Dondero is the portfolio manager of the Highland Income Fund; is that right?
A He is one of the portfolio managers for that Fund.
Q And he's also --
A I believe there are two.
Q And he's also a portfolio manager of NexPoint Capital, Inc., one of the Movants here, right?
A That is correct.
Q And he's also the portfolio manager of NexPoint Strategic Opportunities Fund, another Movant; is that right?
A Yes. That is correct.
Q Okay. And I think you testified earlier that each of these Funds has a board. Is that right?
A That is correct.
Q But the boards don't make investment decisions for the Funds, do they?
A They do not. They have delegated that authority.
Q And that authority to make investment decisions is delegated to the Advisors; is that right?
A Yes.
Q Okay. And none of the boards of the Funds who are Movants here adopted any resolution authorizing the Funds to file this motion; is that right?

A To my knowledge, that is correct.
Q And in fact, the boards were not required to approve the filing of this motion, correct?
A I'm not -- I believe that's a legal question, but to my knowledge, there was not a requirement of the board to -- or, to adopt a resolution for that.
Q Okay. Let's talk a little bit about your background. I think you testified that you're the executive vice president at NexPoint Advisors, one of the Movants. Is that right?
A That's right.
Q Who's the president of NexPoint Advisors, LP?
A Mr. Dondero.
Q And you report directly to him; is that right?
A I do.
Q You're also the executive vice president of Fund Advisors, another Movant; is that right?
A Correct.
Q And Mr. Dondero is the president of Fund Advisors; is that right?
A He is not. There is no president of Fund Advisors. But he -- yeah.
Q You're the president of another entity called NexPoint Securities; is that right?
A That's correct.
Q And you're also the executive vice president of the 11 or

12 funds that are managed by the Advisors here, right?
A Yes. That is correct.
Q Okay. You've been working for Highland Capital Management or other Highland-related entities for a little more than a decade; is that right?
A That's correct. Since June 2010.
Q Okay. Now, you don't personally make any investment decisions for -- for the Funds. Is that right?
A That's correct.
Q And you don't hold yourself out as an investment manager, do you?
A I do not.
Q And you've never worked for a CLO, have you?
A Never worked for a -- for a C -- employed by a CLO. Worked on accounting, various other aspects, but never worked for a CLO.
Q Okay. You referred earlier to the declaration that you've submitted in support of the motion. Do you remember that?
A I do.
Q I've got an assistant on the line here.
MR. MORRIS: Ms. Cantey, can we put up onto the screen Debtor's Exhibit C, which I believe was Mr. Norris's declaration? And if we could go to Page 12 of 26. Oh, all right.
BY MR. MORRIS:

Q And, again, Mr. Norris, as we did in the deposition yesterday, I'll remind you of the difficulty of doing a virtual examination. And if at any time I ask you a question about your declaration that prompts you to think you need to see another portion of the declaration, will you let me know that?

A Yes, I will.

Q Okay. Because I'm not here to test your memory. I'm just here to ask you certain questions. So please let me know if you need to see something that's not on the screen itself.

You didn't write any portion of this declaration; is that right?

A I did not.

Q And you didn't provide any substantive comments to the declaration as drafted because you agreed with -- with the declaration as written by others; is that fair?

A Correct.

Q And all of the key information in your declaration was supplied by NexPoint's management; isn't that right?

A Correct.

Q The individuals who provided the information that's in your declaration include D.C. Sauter, Jason Post, Mr. Dondero, and outside counsel at K&L Gates; is that right?

A Correct.

Q And Mr. Sauter is in-house counsel at the Advisors; is

that right?
A That is right.
Q And Mr. Post is the chief compliance officer at NexPoint; is that right?
A That's correct.
Q The whole idea for this motion initiated with Mr. Dondero; isn't that right?
A The concern, yes, the concern originated, and his concern was voiced to our legal and compliance team.
Q Okay.
MR. MORRIS: Can we take the declaration down for -- oh, actually, no, I'm sorry, leave it there, and let's talk about Exhibit B. Now we can all see it. If you can scroll down to Exhibit B, please. Okay.
BY MR. MORRIS:
Q This page is attached to your declaration, right?
A That's correct.
Q And this page is intended to show the percentage of preferred shares owned by each of the Movant Funds and the 15 different CLOs, right?
A That's right.
Q And the Debtor is the portfolio manager for each of these CLOs; is that right?
A Yes.
Q And it's your understanding that the Debtor's management

of the CLOs on this page is governed by written agreements between the Debtor and each of the CLOs, right?

A Yes.

Q None of the Movants are parties to the agreements between the Debtor and each of the CLOs pursuant to which the Debtor serves as portfolio manager; is that correct?

A I believe that is correct. One, I think, important -- even though they're not subject to the agreement, they are the -- they have the economic ownership of each of these CLOs.

Q But they're not party to the agreement; is that right?

A Not that I'm aware of.

Q Okay. And in preparing for this motion and preparing for your testimony, you didn't personally review any of the agreements between the Debtor and any of the CLOs listed on this page, right?

A No. I relied on legal counsel for that review.

Q Okay. And, but even though you didn't review the agreements, it's your understanding that among the responsibilities that the Debtor has as the portfolio manager is buying and selling assets on behalf of the CLOs; is that right?

A Yes. And I believe I specifically stated in my statement, if you want to turn to it, what I (audio gap) to regarding the CLOs' duties under the agreements.

Q Okay. It's your understanding, in fact, that nobody other

than the Debtor has the right or the authority to buy and sell assets on behalf of the CLOs listed on Exhibit B, correct?

A That's my understanding.

Q Okay. And it's also your understanding, your specific understanding, that holders of preferred shares do not make investment decisions on behalf of the CLO; is that right?

A Correct.

Q And that's something that the Advisors knew when they decided to invest in the CLOs on behalf of the Movant Funds; is that fair?

A That's right. And at that time, the knowledge in the purchase was with Highland Capital Management, LP and the portfolio management team at that time.

Q And it's still with Highland Capital Management, LP; isn't that right?

A That's correct. I'm not sure that the portfolio management team looks the same, but it was HCMLP.

Q Okay. Let's just look at this document for a second. The first column has the list of the CLOs in which the Movant Funds have invested; is that right?

A Correct.

Q And the second column, HIF, that stands for Highland Income Fund; is that right?

A Yes, sir.

Q And Highland Income Fund is one of the Funds who are the

Movants here, right?
A That is correct.
Q And the percentages below that show the percentage of the preference shares of each of the CLOs that that particular fund holds; is that right?
A That's right.
Q And then the third column relates to NexPoint Strategic Opportunities Fund, one of the Movants here; is that right?
A That's correct.
Q And the next column, the fourth column, relates to NexPoint Capital, Inc.'s holding of preference shares in the 15 CLOs, right?
A That's right.
Q So, NexPoint Capital doesn't hold any preference shares in any of the CLOs except for a less-than-one-percent interest in Grayson; am I reading that correctly?
A Yes, that's correct.
Q Okay. And then the last column is intended to show the aggregate portion or percentage of preference shares that the three moving Funds have in each of the 15 CLOs; is that right?
A Yes, that's right.
Q Okay. Am I reading this correctly that, for 12 of the 15 Funds, the moving Funds own less than a majority of the outstanding preferred shares?
A Yes, that's correct.

Q And is it also -- am I also reading this correctly to conclude that the moving Funds owned less than 70 percent of every one of these CLOs; is that right?
A That's correct.
Q You don't know who owns the preferred shares in the CLOs that are not owned by the Movant Funds, do you?
A I don't know any -- any specific owners.
Q And some of these CLOs still have notes that are outstanding; is that right?
A Yes. Very small amounts as a percentage of the overall CLO original capital structure, but yes, some still have small --
Q So, --
A -- notes. Small amounts of notes.
Q Okay. I'm sorry to interrupt. If we looked at Exhibit A, if we took the time to look at Exhibit A, Exhibit A would show, for each of the 15 CLOs, which of those CLOs still had notes outstanding and the amount of out -- the dollar value of those notes. Is that right?
A That's correct.
Q Okay. And your understanding is that -- your understanding -- withdrawn. The payment -- the distributions from the CLOs are made pursuant to a waterfall; is that right?
A Yes, that's correct.
Q And your understanding of the waterfall process is that

the notes that are still outstanding at any CLO must be paid -- must be paid in full before the preferred shares receive any recovery; is that right?

A So, I would say that my understanding is slightly different. It's going to be dependent on each indenture. But, in general, interest payments are made to the debt holders, and anything extra is then allocated to the equity. But ultimate recovery, to your point, would be once those -- once the debt is paid off. And that's the critical thing here, where the preference shares here now with most of these CLOs almost all the way wound down, with the exception of a small piece of debt. The equity owns the lion's share of the economic interest of every one of these CLOs. And I think that's important.

Q Okay. Some of the CLOs still have outstanding notes. Is that right?

A Yes. As we discussed on -- Exhibit A will have the notes that are -- that are remaining on those.

Q And you don't know who holds the notes in the other CLOs, right?

A I don't.

Q The only holders of preferred shares that are pursuing this motion are the three Funds managed by the Advisors, right?

A In this motion, yes.

Q You're not aware of any holder of preferred shares pursuing this motion other than the three Funds managed by the Advisors, correct?
A No, I'm not aware of any others.
Q You didn't personally inform any holder of preferred shares, other than the Funds that are the Movants, that this motion would be filed, did you?
A No, I did not.
Q You're not aware of any steps taken by either of the Advisors to provide notice to holders of preferred shares that this motion was going to be filed, are you?
A I'm not, no.
Q And you're not aware of any attempt that was made to obtain the consent of all of the holders of the preferred shares to seek the relief sought in this motion, correct?
A That's correct.
Q You don't have any personal knowledge, personal knowledge, as to whether any holder of preferred shares other than the Funds managed by the Advisors wants the relief sought in the motion, correct?
A Correct.
Q You don't have any personal knowledge as to whether any of the CLOs that are subject to the contracts that you described want the relief that's being requested in this motion, right?
A That's correct. I have not spoken or been involved at all

directly with the CLOs. I'm representing the Funds.
Q Okay. Now, two of the Funds, two of the three Movant Funds, I believe you testified are publicly traded; is that right?
A That's correct.
Q And that's the Highland Income Fund and the NexPoint Strategic Opportunities Fund; is that right?
A That's right. That's right.
Q And because they are publicly-traded, the shareholders in those two funds can sell their shares any time the market is open; is that right?
A If they're willing to take the price that the market is willing to give, yes.
Q Yes.
A Between market hours.
Q And if they -- if they don't like the way the assets that are -- that the Funds have been invested, one of the things they could do is simply sell their shares, right?
A Yes.
Q And the third fund, the shareholders in the third fund have the right to sell out not on a public market but on a quarterly basis; is that right?
A Correct.
Q That third Movant Fund is NexPoint Capital; do I have that right?

A Correct.
Q So they also have the ability to exit if they don't like management on a quarterly basis; is that right?
A Correct.
Q All right. Can we turn to Paragraph -- Paragraphs 8 and 9 of your declaration? Okay. Paragraph 8 describes a transaction that's been referred to as OmniMax; is that right?
A Yes.
Q And Paragraph 9 refers to a transaction involving SSP Holdings, LLC; do I have that right?
A That's correct.
Q Do you know what SSP stands for?
A See if we say it in there. SSP Holdings, LLC.
Q Right. Do you know what SSP stands for?
A I don't. Something Steel Products. I --
Q Okay. You don't need to guess. These are the only two transactions that the Movants question; is that right?
A These transactions, as well as certain transactions around Thanksgiving time.
Q Okay. We'll talk about those. But those transactions about -- around Thanksgiving time aren't in your declaration, are they?
A Not specifically mentioned by name.
Q Okay. Let's talk about the two that are mentioned by name, Trussway and SSP. The Movants do not contend that

either transaction was the product of fraudulent conduct, do they?

A No.

Q The Movants do not contend that the Debtor breached any agreement by effectuating these transactions, do they?

A I don't believe so.

Q In fact, the Movants do not contend that the Debtor violated any agreement at any time in the management of the CLOs listed on Exhibit B; is that right?

A That's right.

Q The Movants don't even question the Debtor's business judgment, only the results of the trans -- of these two transactions. Is that right?

A That's right. And results is the key here and the approach.

Q I see. And the reason the Movants do not question the Debtor's business judgment is because you don't know what factor or factors the Debtor considered in executing these transactions, right?

A That's right. I can't look into the mind or know the business judgment and the inputs that went into this. We do know the outcomes. And to us, that's troubling, right, as the owners of the lion's share or the majority or even significant amounts of the economic ownership of the CLOs. And having insight into those transactions, as mentioned in my statement,

really just trying to maximize recoveries for our Funds.

MR. MORRIS: Your Honor, I move to strike the portion of his answer following that which was responsive to the question.

THE COURT: All right. I grant that motion.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Sir, you never asked the Debtor what factors it considered in making these trades, right?

A I did not.

Q And you have no reason to believe that anyone on behalf of the Movants ever asked the Debtor why it executed these trades, right?

A I don't have any knowledge. There could have been somebody from -- from the Movants. But I did not.

Q Okay. On OmniMax, the Movants disagree with the price at which the Debtor effectuated the trade, right?

A Correct.

Q And I believe there was a meeting of the boards of the Funds back in August at which Mr. Seery appeared. Do I have that right?

A I believe it was August, but he did appear.

Q And the purpose of the appearance was so that Mr. Seery could give an update on the bankruptcy; is that right?

A That's correct, and on the services provided by Highland

Capital Management, LP to our Advisor. Advisors. They provide various shared services.

Q And it was during that meeting that Mr. Seery forthrightly told the boards the price at which he was planning to execute the OmniMax transaction, correct?

A Correct.

Q The transaction hadn't yet occurred, right?

A I'm not sure if it had been finalized. He had a price, and these -- these things are negotiated. This was, I believe, a company in restructuring. So I don't know whether it had been transacted or not.

Q Okay. The board didn't ask Mr. Seery not to execute the transaction, did it?

A Not to my knowledge. The board wouldn't -- I don't think the board would have that authority, either.

Q Okay. But it's here asking the Court to cause the Debtor to pause in the execution of any trades in the CLOs; is that right?

A I think the order speaks in that regard.

Q Yeah. Okay. Let's talk about the SSP transaction for a moment. It's your understanding that Trussway Holdings, LLC owned a majority interest in SSP Holdings, LLC, right? That's in Paragraph 9.

A Yes. The statement in Paragraph 9 is what I believe is correct.

Q Okay. And it's also your understanding that Trussway is a wholly-owned subsi... I'm sorry, that SSP Holdings is a wholly-owned subsidiary -- withdrawn. It's also your understanding that Trussway is a wholly-owned subsidiary of the Debtor, right?

A Yes.

Q But Trussway is not a debtor in bankruptcy, right?

A I'm not sure.

Q Okay. You have no reason to believe that; is that fair?

A That it's not a debtor in bankruptcy? That Trussway is not in bankruptcy itself?

Q Correct.

A Yeah. I have no knowledge of Trussway's situation.

Q Okay. But you -- but according to your declaration that was prepared by the Advisors' management team, Trussway and not the Debtor owned SSP Holdings, LLC. Is that right?

A I'm looking here at the statement just to make sure.

Q Sure.

(Pause.)

A I -- again, I -- the statement is correct, and I believe speaks for itself regarding entity ownership.

Q The only things you know about the SSP transaction are, one, that you believe it was made without a formal bidding process; and two, that it resulted in a $10 million loss. Is that right?

A Correct.
Q Okay. But, again, neither you, or to the best of your knowledge, anybody at Advisors, ever spoke with anybody at the Debtor about the circumstances concerning either of the transactions, right?
A I don't know the conversations that were had at anyone else from our Advisors, but this is the knowledge that -- that I have.
Q Okay. And it's the only knowledge you have, right? You don't know anything about the SSP transaction other than those two facts, right?
A Correct.
Q In fact, I think you testified yesterday that you've been very remote from the SSP transaction, right?
A That's correct.
Q And that it's not a transaction that you have much knowledge on. Fair?
A Fair.
Q Let's just talk briefly about the transactions that occurred (garbled) Thanksgiving. They're not specifically referred to in your declaration; is that right?
A That's correct.
Q And you have no knowledge about any transaction that Mr. Seery wanted to execute around Thanksgiving; is that right?
A I know there were transactions and there were concerns

from our management team, but I'm not aware of what the transactions were.

Q In fact, you can't even identify the assets that Mr. Seery wanted to sell around Thanksgiving, or at least you couldn't at the time of your deposition yesterday. Is that right?

A That's correct.

Q And you have no knowledge as to why Mr. Seery wanted to make those particular trades at around Thanksgiving?

A No, I don't.

Q And in fact, you don't even know if the transactions that Mr. Seery wanted to close around Thanksgiving ever in fact closed. Is that fair?

A Correct.

Q Okay. Let's just -- let's just finish up with a few questions about the boards.

MR. MORRIS: Ms. Cantey, can we put up Debtor's Exhibit EEEE? Four E's, Your Honor. Thank you.

BY MR. MORRIS:

Q This particular page identifies the directors for each of the three Movant Funds; is that right?

A Let me take a look and confirm. (Pause.) Yes. That looks correct.

Q Okay. And this was prepared by the Movants; is that right?

A I'm not sure who prepared it.

Q Okay. To the best of your knowledge, does this document accurately reflect the composition of the boards of each of the three Movant Funds?
A Yes, it does.
Q Okay. John Honis, I think you mentioned him earlier. He's on all three boards. Is that right?
A That's correct. And the reason being we have a unitary board structure, so -- which is very common in '40 Act Fund land, where the board sits, for efficiency purposes, on multiple fund boards, and there's a lot of economies of scale from an operating standpoint. So, yes, they sit on multiple boards.
Q Okay. And for purposes of the '40 Act, Mr. Honis has been deemed to be an interested trustee. Is that right?
A That's correct.
Q Okay. But you don't specifically know what facts caused that designation; you only know that the designation exists. Right?
A That's right. And I know they are disclosed in the proxy -- or, in the -- the relative filings related to those Funds.
Q Okay. Three other people are common to all three of the Movant Funds. I think you've got Dr. Froehlich, Ethan Powell, --
A Froehlich.
Q Froehlich. Ethan Powell and Bryan Ward. Right?

A That is correct.
Q Okay. All three of those individuals actually serve on the 11 or 12 boards that you mentioned earlier that are managed by the Advisors, right?
A Yes, that is correct.
Q And they're the same Funds for which you serve as an executive vice president, right?
A Yes. That's correct.
Q So, for all of the Funds that are managed by the Advisors, you serve as executive vice president and all four of these directors -- trustees serve as trustees on the boards, right?
A Yes, that's correct.
Q Okay. In exchange for serving on all of these boards, the three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell -- each receive $150,000 a year for services across the Highland complex; is that right?
A That's correct.
Q Dr. Froehlich has been serving as a board member across the Highland complex for seven or eight years now; is that right?
A That's correct.
Q Mr. --
A I believe it's about seven or eight years.
Q And Mr. Powell, he actually was employed by Highland or related entities from about 2007 or 2008 until 2015, right?

A That's correct.
Q And Mr. Ward, the third of the independent trustees, he's been serving as a board member on various Highland-related funds on a continuous basis since about 2004. Do I have that right?
A Yeah, I believe that's correct.
Q Okay. Just a couple of final questions. You would agree, would you not, sir, that portfolio managers have an obligation to effectuate transactions concerning the assets that they manage based on their business judgment?
A Yes. And in accordance with whatever governing documents govern the fund structure.
Q And you would personally expect a portfolio manager to execute a transaction that he or she reasonably believes in good faith and in their business judgment would maximize value for the CLO, even if the CLO did not need cash at that particular time. Is that right?
A I think it would come down to the governing documents. And I think what you're getting at here is, in this instance, these sales and the intent of the portfolio manager. And our view, again, is -- and the request for the motion is simply there is a lot at play here. Several negotiations. And in order to maximize returns, simply asking for a pause on transactions.
Q All right. Let me -- let me ask the question again, and I

would ask that you please listen carefully to the question. You would expect a portfolio manager would execute a transaction that he or she believes maximizes value, even if the CLO didn't need cash at that particular moment in time. Correct?

A Yeah. As long as that is maximizing value for the stakeholders, and in the instance of a CLO, the economic interest is owned by the equity holders. So, to their benefit, yes, that -- that would be the idea.

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

THE COURT: Any redirect, Mr. Wright?

MR. WRIGHT: Only briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q Mr. Norris, I think you were asked at one point about how long you'd been working for Highland Capital Management, which there's -- there's Highland Capital Management Fund Advisors and then there's Highland Capital Management, LP, Debtor. And I wanted to give you an opportunity to just explain when and what years you worked for HCMLP and then when and what years you worked for NexPoint Advisors or Highland Capital Management Fund Advisors.

A Yes. From June 2010, I was employed by Highland Capital Management, LP, until July or August of 2012, at which time I was then hired by Highland Capital Management Fund Advisors,

not HCML -- no longer employed by HCMLP, and have worked since that time for HCMFA and NexPoint Advisors and not for the Debtor, HCMLP.

Q Okay. So -- and I'm sorry if I missed a year, but it's been about ten years since you had worked for HCMLP or been an employee of HCMLP, correct?

A Yeah. It's been over eight years since I have left employment by HCMLP. Ten and a half years ago, I started working for HCMLP, and then two years after that transitioned away and started working for the Advisors that are part of this motion.

Q Thank you for clarifying.

MR. WRIGHT: Your Honor, I hope -- you directed us to have a witness here today, and so we do. And I know that you had asked me at the last hearing some questions about the involvement of people at HCMLP, which I tried to address with Mr. Norris in my direct. But I, you know, I do want to make sure that we've answered any questions that you have.

THE COURT: All right. Yes, that's fine. Are you -- does that conclude your redirect?

MR. WRIGHT: It does, Your Honor.

THE COURT: Any recross, Mr. Morris, on that redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right, then. That concludes the

testimony of Mr. Norris.

Any other evidence, Mr. Wright?

MR. WRIGHT: I do not, Your Honor, although I guess I would offer the Exhibit A and Exhibit B to Mr. Norris's declaration --

THE COURT: Any objection to that?

MR. WRIGHT: -- into evidence.

MR. MORRIS: No, Your Honor.

THE COURT: All right. Those are admitted.

(Movants' Exhibits A and B are received into evidence.)

THE COURT: All right. Well, Mr. Morris, did you want to put on any evidence?

MR. MORRIS: Does the -- do the Movants rest, Your Honor?

THE COURT: I understood that they rest. Correct, Mr. Wright?

MR. WRIGHT: That's correct, Your Honor.

MR. MORRIS: Your Honor, I would move, effectively, for a directed verdict here. The Movants have the burden of establishing a *prima facie* case to entitlement to the relief that's been requested, and they have failed to meet that burden. The Debtor has -- we -- the undisputed facts are the Debtor has the contractual right, and indeed, the obligation, to serve as the portfolio manager of the CLOs pursuant to written agreements.

The Movants are not parties to those agreements. The testimony is undisputed that there are many holders of preferred shares and notes that have had no notice of this proceeding that will undoubtedly be impacted by the tying of the hands of the portfolio manager. The chart that was attached as Exhibit B expressly shows just what a large portion of interested parties and people who would be affected by this motion are not -- they didn't get notice. There was no attempt to get notice. There was no attempt to get their consent. All of that testimony is now in the record, and I think due process alone would prevent the entry or even the consideration of an order of this type.

There is nothing improper that's been alleged. There is no -- there is no allegation of fraud. There is no allegation of breach of contract of any kind. There's not even a question of business judgment. The Movants didn't even do their diligence to ask the Debtor why they made these transactions. There is nothing in the record that shows that the Debtor, as the portfolio manager of the CLOs, did anything improper.

The only thing that the Movants care about is that they don't like the results in two particular trades. I don't think that that meets their burden of persuasion that the Court should enter an order of this type, and I would like to relieve Mr. Seery of the burden, frankly, and the Court, of

having to put on testimony to justify transactions that really aren't even being questioned, Your Honor.

So the Debtor would respectfully move for the denial of the motion and the relief sought therein.

THE COURT: All right. Your request for a directed verdict, something equivalent to a directed verdict here, is granted. I agree that the Movant has wholly failed to meet its burden of proof here today to show the Court, persuade the Court that, as Mr. Morris said, I should essentially tie the hands of the Debtor as a portfolio manager here, as stated. Nothing improper has been alleged. There has been no showing of a statutory right here, or a contractual right here, on the part of the Movants.

I am -- I'm utterly dumbfounded, really. I agree with the -- I was going to say innuendo; not really innuendo -- I agree with part of the theme, I think, asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion. I feel like he sidestepped the requirement that I stated last week that if we had a contested hearing on his motion, Dondero's motion, that I was going to require Mr. Dondero to testify. He apparently worked out an eleventh hour agreement with the Debtor on his motion to avoid that. But, again, these so-called CLO Motions very clearly, very clearly, in this Court's view, were pursued at his sole direction here.

This is almost Rule 11 frivolous to me. You know, we're -- we didn't have a Rule 11 motion filed, and, you know, I guess, frankly, I'm glad that a week before the holidays begin we don't have that, but that's how bad I think it was, Mr. Wright and Mr. Norris. This is a very, very frivolous motion. Again, no statutory basis for it. No contractual basis. You know, you didn't even walk me through the provisions of the contracts. I guess that would have been fruitless. But you haven't even shown something equitable, some lack of reasonable business judgment.

Bluntly, don't waste my time with this kind of thing again. You wasted my time. We have 70 people on the video. Utter waste of time.

All right. So, motion is denied. Mr. Morris, please upload an order.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. Do we have any other business to accomplish today?

MR. POMERANTZ: I don't think so, Your Honor. I know we will see you tomorrow in connection with Mr. Daugherty's relief from stay motion.

THE COURT: Well, yeah, we do have that. Okay. We will see you tomorrow. We stand adjourned.

MR. CLEMENTE: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 3:05 p.m.)

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CERTIFICATE

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

/s/ Kathy Rehling **12/17/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

EXHIBIT 66

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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Friday, March 19, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	MOTIONS TO STAY
	)	PENDING APPEAL
	)	

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

WEBEX APPEARANCES:

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

DALLAS, TEXAS - MARCH 19, 2021 - 9:39 A.M.

THE COURT: We have a Highland setting on various motions for stay pending appeal of the confirmation order. This is Case No. 19-34054. We have four Movants, or two Movants and two Joinders. Let's get appearances first from those Movants. First, for the Advisors, do we have Mr. Rukavina or someone from his team?

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina. I apologize, my camera is not working. IT is running here to fix it. I represent NexPoint Advisors, LP and Highland Capital Management Advisors, LP.

THE COURT: All right. Now for the -- what we call the Funds, who do we have appearing? Someone from K&L Gates, Mr. Hogewood, by chance?

MR. HOGEWOOD: Good morning, Your Honor. This is Lee Hogewood representing the Funds. From K&L Gates, as you said. Thank you.

THE COURT: Okay. Thank you. All right. For the joinder parties, who is representing Mr. Dondero this morning?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor appearing on behalf of Mr. Jim Dondero.

THE COURT: Okay. And now for the Get Good Trust and the Dugaboy Trust, who do we have appearing? Do we have Mr. Draper or someone?

MR. DRAPER: Good morning. Good morning, Your Honor.

Unfortunately, I was on mute. This is Douglas Draper appearing for the Get Good and Dugaboy Trusts.

THE COURT: All right. Thank you.

Now for the Debtor team, who do we have appearing from the Debtor team?

MR. POMERANTZ: Good morning, Your Honor. Jeff Pomerantz; Pachulski, Stang, Ziehl & Jones; on behalf of the Debtor. Several of my colleagues are on the phone, but I will be handling the matter today.

THE COURT: Okay. Good morning.

For the Unsecured Creditors' Committee, who joined in the Debtor's objection, who do we have appearing?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente, Sidley Austin, on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. Well, that was all of the parties who filed pleadings. I know we have a lot of observers this morning.

First, let me ask, can you hear me okay? I heard that there was a little bit of sound issue with my mic. Can everyone hear me okay? All right.

MR. CLEMENTE: Your Honor, when you first started, it was fuzzy, but when you were speaking just now, it sounded great.

THE COURT: Okay. Good.

All right. Well, let's talk about time estimates. I will tell you, I have a hard stop today at 12:15. In a normal case, we would be definitely finished, I think, in probably an hour-ish. I shouldn't say normal. I should say in an average case. But this case doesn't tend to be very average. So I would think an hour per side, okay -- hour for the Movant and Joinders and then an hour for the Debtor and Committee, so a two-hour time limit -- would be reasonable. Does anyone want to disagree with that?

All right. Well, then that's where I will limit you.

And let me just ask, so I kind of know going in, is it going to be that the Movants have a witness or evidence to put in? I saw last night the Debtors filed a witness and exhibit list, but I didn't scan it this morning to see -- oh, I do see that you filed, on the 17th, at least the Advisors filed a witness and exhibit list.

So, anyway, I'll start with Mr. Rukavina. Are you all -- is your team going to put on evidence?

MR. RUKAVINA: Your Honor, our only evidence is going to consist of my Docket 2043, those exhibits you referenced. We reserve the right to cross-examine Mr. Seery if the Debtor puts him on. But I think we envision mainly oral argument today.

And just so Your Honor knows, my exhibits are pretty much just a record of the confirmation hearing plus a few claim

transfer forms.

THE COURT: All right. Well, are there any housekeeping matters before I go ahead and let the Movants make their opening statement?

All right. Well, you may proceed. Mr. Rukavina, are you going first?

MR. RUKAVINA: No, Your Honor. Mr. Hogewood will. So I'll yield to the podium to him, with your permission.

THE COURT: All right. Mr. Hogewood, you may proceed.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. HOGEWOOD: Thank you, Your Honor. Again, Lee Hogewood with K&L Gates on behalf of the Funds.

As Your Honor knows, this confirmation hearing started on February 2nd and continued on to February 3rd. The Debtors cleverly in their objection made reference to the movie *Groundhog Day*, and it seems appropriate for this case and for the day when the confirmation started. We're here about six weeks later asking for a stay pending appeal. Our papers have gone over many of the same arguments that the Court has rejected before, so in that regard it is indeed somewhat like the movie *Groundhog Day*.

We also know that stays pending appeal are rare, especially stays granted by the court that rendered the decision that is to be appealed. But the Rules require us to

come to this first -- this Court first to request a stay in the first instance.

The issues, I think, have been briefed, and there's no point in belaboring *Groundhog Day*-type arguments any more than is necessary. So I'm going to try to be relatively brief, and I think the group will beat the hour that has been assigned to us. We appreciate it.

Like injunctions, stays are the exception, not the rule, and the standards are similar. Balance of harms, likelihood of success, and the public interest. In 30 years of practice, I have obtained three stays pending appeal. In two of those, the bankruptcy judge granted the stay *sua sponte*. Judge Marvin Wooten, the Western District of North Carolina, stayed two decisions in the early '90s because he was confident he was right, he knew he had pushed the envelope on existing Fourth Circuit authority, and he knew that the appeal would be moot without a stay. He turned out to be right, the Fourth Circuit affirmed his decisions, and the law advanced in the manner that Judge Wooten thought that it should. In the other, the bankruptcy judge denied the stay and the district court subsequently granted it.

For many reasons, most of them already identified by Your Honor in earlier rulings, this is the type of case in which a stay should be granted. In Your Honor's ruling on February 8th and in the written order, the Court made abundantly clear

that this Court viewed this case to be exceptional for a long list of reasons detailed orally and in writing. A view of the case being exceptional was part of the justification for pushing the envelope on Fifth Circuit law on issues upon which the Funds have based their appeal.

And I want to be clear: The Funds' appeal is only on the issues of exculpation, injunction, and gatekeeper, in light of *Pacific Lumber*. The Debtors challenged standing, and we all agree that the question is are we, the Funds, a person aggrieved? The Funds are aggrieved in several ways.

First, the Court made findings regarding a lack of independence or being controlled by the so-called Dondero complex. The Funds, Your Honor, receive advice from the Advisors, and the Funds' boards make decisions based upon that advice, after making an independent determination of whether the advice is in the best interests of the Funds. The Funds then expect the Advisors to implement that advice that they have given, or, indeed, if the Funds disagree with the advice, to implement the decision that the Funds have made.

It is, therefore, customary for the Advisors to take the lead, including the lead in litigation matters on behalf of the Funds, and the Court's conclusions of Dondero's control and a lack of independence of the Funds based upon a lack of participation by the Funds is not fair. The finding converts customary conduct into a conspiracy of control.

The analogy that works for me on this, Your Honor, is a lawyer analogy. If the Pachulski law firm advises the Debtor to file an adversary proceeding and the Debtor's independent board considers and accepts the advice and directs Pachulski to do so, Pachulski files the complaints, proceeds to take depositions, and moves the litigation forward. No one would conclude from that conduct that Pachulski controlled the Debtor or that the Debtor lacked independence from its law firm.

The same conclusion should be reached regarding the Funds. As was testified to at several hearings in this case, the Funds' independent board meets regularly, and during the pendency of this case, and particularly over the last several months, almost weekly, if not more, to address and consider advice from the Advisors and its independent counsel, a partner at a law firm, not at K&L Gates.

These matters were testified to by Mr. Post, who is an officer of the Funds, and he is also an employee of the Advisors, but that does not make Mr. Post in control of the Funds.

While the factual finding of the Court on this topic of control is already on the record and some harm may have already been done, a stay pending appeal of the confirmation order mitigates the harm until the issue can be considered by a higher court.

The Funds also have a different view of the investment horizon for their assets, not the Debtors' assets, than is possible under the Debtor's so-called asset maximization plan. As part of that plan, the Debtor will be liquidating assets owned by the Funds, not the Debtor, more rapidly than the Funds' boards believe is in the best interests of their investors. The confirmed plan creates an irreconcilable conflict between the Debtor and its plan obligations and the Funds and their investors.

Interplay between the exculpation injunction and gatekeeper directly limits the Funds' contractual rights and may impair their ability to take action in the best interest of their holders, thousands of outside investors. The Funds and their owners are aggrieved by these provisions.

These issues have been presented repeatedly, and the Court clearly does not agree with the positions that I am stating on behalf of the Funds. That said, the Court has made clear that this is an exceptional case. And there is a good faith argument that we are making that the plan's provisions approved by the Court go well beyond what is permissible under existing Fifth Circuit law.

Indeed, the exceptional nature of the case, at least in part, the Court's -- was, at least in part, underlying the Court's willingness to enter these sweeping provisions. A stay pending appeal (audio gap) exceptional relief should be

granted in an exceptional case so that plan provisions can be collectively tested.

In the meantime, there is little harm to the Debtor in continuing to operate in Chapter 11 while the appeal proceeds, particularly if the Fifth Circuit accepts the certification of direct appeal from this Court.

These are important issues that merit a review without the threat of having the appeal dismissed as moot, and this Court enjoys the discretion to grant a stay pending appeal.

We respectfully request that you exercise that discretion in light of the previously-expressed view of the exceptional nature of this case. Thank you very much.

THE COURT: All right. Thank you.

Are there any other opening statements for the Movants or Joining Parties?

MR. RUKAVINA: Your Honor, Davor Rukavina, if I may.

THE COURT: Okay. Go ahead.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, I'll echo what Mr. Hogewood said, and I hope that the Court has some sympathy for us. It's a difficult position we're in, telling a court that rendered an opinion, after careful thought and protracted deliberation, that she's wrong, and we do respectfully and we do so humbly. But like Mr. Hogewood said, we are required by the Rules to come to this Court first.

Your Honor, on my clients' standing, we are directly subject to the plan's injunctions. And I have presented Your Honor case law, including the Fifth Circuit *Zale* opinion, that confirms that, in and of itself, that grants us standing. And that's only logical. A person subject to contempt for violating an injunction has the ability to test that injunction on appeal.

As far as the economics of the plan, my exhibits, Your Honor, include four claim transfer forms that were filed two days ago. I think there's one more in the works. We have acquired, as part hiring various former Debtor employees, by agreement, we have acquired their Class 8 claims. The Debtor did object to those claims last evening, but as of now those claims still exist and have not been disallowed.

And if Your Honor wants to talk about the law, I have a case that confirms that a claim purchase, even after the entry of an underlying order, grants the party, so long as they acted timely, standing on the underlying order.

So my clients, Your Honor, now have standing not only to contest the plan's injunction provisions but also the underlying plan itself. And by that, I'm referring to the absolute priority rule.

Your Honor, I have briefed that. Your Honor has rejected my arguments. Your Honor has relied on a Western District opinion. Those issues are what they are. I would simply

humbly submit that I have made a substantial case on the merits on an important issue, which is, I think, what Judge Jones ruled is the standard for likelihood of success on the merits.

And it really is very simple, Your Honor. The Debtor argues and this Court accepted the argument that as long as equity doesn't get a penny until creditors are paid in full, then the absolute priority rule is preserved as opposed to being violated. And I would argue that that's not the case because the Code clearly provides for the preservation or grant of any property interest, any property interest at all, no matter if it's worthless or highly contingent.

On the exculpation and injunction provision, Your Honor. On exculpation, as I argued at the confirmation hearing, I think that the Fifth Circuit will revisit its *Pacific Lumber* opinion to allow the Court to exculpate case professionals for case administration during the pendency of the case. And I think Your Honor will be affirmed on that. I know some of my co-counsel will disagree.

But the fact of the matter is that *Pacific Lumber* exists today. It has yet to be overturned. So, Your Honor, we believe that we have a probability of success on that issue.

But more importantly, the exculpation that this Court approved does something that I don't think any court has approved before. It exculpates prospective future post-

reorganization liabilities. That Your Honor I don't think can do under any scenario.

On the injunction issue, as I argued before, if the Court will have no jurisdiction to entertain the purely post-confirmation action, I accept and I respect and I agree that the Court has vast powers with respect to pre-confirmation claims, but on the post-confirmation claims that are enjoined, if the Court will have no jurisdiction to try those claims, then the Court will have no jurisdiction to issue a finding that the claim is colorable or not. Because if the Court finds that the claim is not colorable, I'm done. There's no other court I can go to. There's no mechanism that I can at that point in time trigger to protect my clients' rights.

And Your Honor, with respect to the Debtor's arguments about prior orders entered in the case, it's black letter law that the Court cannot create jurisdiction and the parties cannot stipulate to jurisdiction. So whatever prior orders were entered in the case, and we can talk about whether they were intended to apply post-confirmation or not, those prior orders cannot be read as creating jurisdiction where none would exist, *i.e.*, post-confirmation.

Your Honor, on the Rule 2015.3 issue, it's not worth even talking about today. It's a minor issue. I made it to preserve the record on it.

I echo what Mr. Hogewood said about the Debtor not being

harmed. Mr. Seery has terminated or the Debtor has terminated the shared services agreements. The Debtor has terminated employees. The Debtor will have very little cost going forward as far as administering its assets. That cost will be incurred regardless of whether the plan goes effective or not.

The Debtor has only some six assets left to administer. The Debtor, as I understand it, is in the process of already trying to sell those assets. The Debtor can do that in Chapter 11 or post-confirmation.

So, as I asked Mr. Seery at the confirmation hearing, as I have briefed and as we have in the transcripts, the plan gives Mr. Seery nothing that he lacks today in order to finish administering this estate. By that, I mean to liquidate its assets and to adjudicate its liabilities.

The Debtor's response to my motion did accurately raise an issue that I had not fully developed, which is that, yes, the Debtor will have an increased cost if it's in a Chapter 11 that's open because of a stay pending appeal. And the Debtor -- the bond -- if the Court grants a stay pending appeal, a bond should take into account that increased cost. So that's the final point I have to make, Your Honor, which is that if we talk about the bond, whether now or later, what I had proposed initially was that okay, the creditors that would be paid soon should be compensated for the time value of money. That's a proposition that the Debtor appears to agree with.

And we know what the appropriate interest rate is. And then we should include in the bond an amount for the Debtor's additional burn rate for being in Chapter 11, meaning filing MORs, perhaps filing 9019 motions. But it's not $2.2 or $2.3 million per month, as the Debtor suggests. It's a far lower amount. And again, we can argue about that later, depending on whether the Debtor has evidence on that or not.

So we believe that a bond in the neighborhood of $3 or $4 million is appropriate, and that in the future, if we lose the appeal, then the Court will decide what portion of that bond should be forfeited, not as liquidated damages, not as the price of playing poker, but as compensation for the actual increased cost the estate incurred as a result of not having the plan go effective.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Do any of the Joining Parties have opening statements?

MR. TAYLOR: Yes, Your Honor. Clay Taylor on behalf of Mr. Jim Dondero.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES DONDERO

MR. TAYLOR: Your Honor, I'm not going to reiterate what Mr. Hogewood and Mr. Rukavina said, but I did want to address one thing that the Court has brought up before and I thought it was important to address that point. And that is,

what is Mr. Dondero's standing and how is -- and when we're talking about a stay pending appeal, how in the balancing of the harms to the respective parties, how is Mr. Dondero being harmed?

Well, Mr. Dondero has said from the beginning of this case, when Mr. Seery started selling off assets with little to no notice, that he wasn't getting enough value for those. Okay? And the question has been raised, well, if equity was never going to be reached anyway, how is Mr. Dondero harmed? Well, as Your Honor has seen, and the papers have certainly said, and as suits have started to be brought, alter ego claims are being brought against Mr. Dondero. To the extent the value, the full value of those assets are not realized, which Mr. Dondero says should be higher and could be higher if proper notice was given and a full auction-like process was instituted, then Mr. Dondero and the Unsecured Creditors' Committee or the Trust, as the case may be, if this plan goes effective, is going to bring those claims for the difference between what was actually recovered and what the full value of the debt is. And that could run into the tens or hundreds of millions of dollars.

So that is true irreparable harm that my client is going to face if there's no stay pending appeal. And we think that is a very important one. And as Mr. Rukavina just stated, there's no real difference to the Debtor and Highland if it

runs its wind-down plan through a Chapter 11 or, alternatively, under its wind-down or liquidation plan. And so, therefore, that is something we wanted the Court to consider.

THE COURT: Thank you. All right.

Any other openings from the Objectors? Or, I'm sorry, the Movants and Joinders? Mr. Draper, anything from you?

MR. DRAPER: Yes, Your Honor. I have just a few comments to make.

OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY INVESTMENT TRUST

MR. DRAPER: The Court has looked very carefully at *Pacific Lumber* and has spent an inordinate amount of time. In our joinder paper, we gave the Court the citation to *Stanford* -- *S.E.C. versus Stanford*, and I'd ask the Court, when you look at success on the merits, to take *Pacific Lumber*, take *S.E.C. v. Stanford*, and Judge Jones' decision ten years later, and juxtapose that to the *Blixseth* decision that was cited by Mr. Pomerantz. And you could see the Fifth Circuit view on both exculpation and releases.

And the interesting note is *Pacific Lumber* was written by Judge Jones in 2009, *S.E.C. v. Stanford* is 2019. And *S.E.C. v. Stanford*, though it's a receivership case, looks directly at the jurisdiction of a district court to grant the relief that's been requested here. And I'd ask the Court to take a

look at that. We think success on the merits is apparent from just looking at those three cases.

THE COURT: All right. Thank you.

All right. Mr. Pomerantz, opening statement?

MR. POMERANTZ: Yes, Your Honor. I have a fairly lengthy opening statement that I was going to go through each of the issues and elements in a lot more detail. I'm happy to do that, Your Honor. I have a lengthy argument on standing and harm and whatnot, if Your Honor believes that that would +be helpful. I don't want to waste the Court's time if Your Honor does not believe that would be helpful.

THE COURT: All right. Go ahead. I think it would all be helpful.

MR. POMERANTZ: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Your Honor, we're here yet again -- first of all, I'd like to admit my exhibits into evidence. Again, as similar to Mr. Rukavina's exhibits, they are essentially documents that are part of the court record. I don't think there's any controversy regarding them.

Also, we do not intend to present any witnesses at the hearing today.

THE COURT: All right. Well, shall we --

MR. RUKAVINA: Your Honor, if --

THE COURT: Yes. Shall we both just stipulate to the

admissibility of all of these exhibits? Are you both in a position to do that?

MR. RUKAVINA: I am prepared to stipulate, Your Honor.

MR. POMERANTZ: Yes, I am, Your Honor.

THE COURT: All right. So, --

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: So, let me just be clear. The Movants' collective exhibits are found at Docket Entry 2043, and it looks like we have -- is it Exhibits A through M, Mr. Rukavina?

MR. RUKAVINA: Yes, Your Honor. Exhibits A through M as in Mary.

THE COURT: Okay.

MR. RUKAVINA: One of those, just so Your Honor knows, has a wrong exhibit label on it, so we'll file an amended that just cleans it up, but otherwise it's all in there and correct.

THE COURT: All right. So those are admitted.

(Movants' Exhibits' A through M are received into evidence.)

THE COURT: And then Debtor's exhibits are at Docket Entry 2058. They are Numbers 1 through 33, correct, Mr. Pomerantz?

MR. POMERANTZ: Your Honor, I believe it's 1 through

36.

MR. MORRIS: Substantively, it's 1 through 33, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: Okay.

THE COURT: All right. So those are admitted.

MR. POMERANTZ: Oh, you're right. That is correct.

THE COURT: Okay. Those will be admitted as well.

(Debtor's Exhibits 1 through 33 are received into evidence.)

THE COURT: All right. Go ahead.

MR. POMERANTZ: Thank you, Your Honor. Your Honor, we're here yet again to respond to a series of motions filed by the Dondero entities, now in their capacity as Appellants, seeking to put another roadblock in the way of the plan and distributions to creditors.

These motions, like the various litigation involving the Dondero entities that preceded them, border on the frivolous and are not presented in good faith. They are being prosecuted to harass the Debtor and its creditors, get them to spend more money, in the hope that at some point the Debtor and the creditors will accept Mr. Dondero's plan.

While yes, this case is exceptional, it's not exceptional because of any legal issues involved. It's exceptional as to the level at which a former CEO and person in control of the

Debtor has taken to interfere with the Debtor, its operations, and a court-appointed independent board.

Mr. Dondero has had every opportunity throughout this case to make a proposal acceptable to the Debtor and creditors to buy his company back. The Court has implored him to do so on many occasions, as have the Debtor and the creditors. But to this point, he's refused to provide an acceptable proposal.

He should just acknowledge defeat and go on with the remaining business ventures he has, but as we know, Your Honor, that's not the Dondero way. And we are here yet again spending estate resources which should really be put in creditors' pockets.

The Court should deny the motion for several reasons. First, as I will go into in some detail, the Appellants lack standing to appeal the confirmation order as they cannot demonstrate that they're persons aggrieved.

However, even if the Court determines that the Appellants do have standing to appeal, they cannot satisfy the standard for a stay, which, as everyone admits, is an extraordinary remedy that requires the Appellants to establish each of four elements. They can't demonstrate likelihood of success on the merits of any of the legal issues. They haven't established harm, let alone irreparable harm, from a stay. And conversely, the Debtor has presented a compelling case of why it and its creditors, who have been waiting for years to be

paid, will be harmed if the confirmation order is stayed. And lastly, Your Honor, the public interest is not stayed -- is not served by allowing the Dondero entities' parochial agenda to get in the way of a prompt conclusion in this case.

Before addressing each of these issues in detail, Your Honor, I did want to address an overarching issue that cuts across several of the Appellants' arguments specifically as they relate to the injunction and exculpation provisions. Appellants argued at confirmation and they repeat the arguments here in the papers and comments today that by extending the exculpation and injunction provisions to matters relating to implementation and consummation of the plan, the Appellants are prevented from exercising their rights on the post-effective-date commercial relationships that they will have with the Reorganized Debtors and for pursuing claims against protected parties relating to the same.

The argument, however, Your Honor, reflects a serious misunderstanding of this language, implementation and consummation. At confirmation, I informed the Court and all objecting parties that the words implementation and consummation did not go as far as the Appellants feared. Specifically, I reminded everyone that implementation was a term of art that was specifically referenced in 1123(a)(5) of the Code and which provides that a plan can provide for its implementation. And I described the primary means of

implementation under the plan that the exculpation and the injunction related to, which matters are set forth in Article 5 of the plan and include a cancellation of equity interests, the creation of new general partners and limited partner of the Reorganized Debtor, a restatement of the limited partnership agreement, and the establishment of the Claimant Trust and the Litigation Trust.

The injunction prohibits efforts to interfere, among other things, with those steps, and the exculpation prohibits parties from asserting claims against the exculpated parties relating to those activities that relate to implementation.

Implementation in the context of the injunction provision does not mean performance under post-effective date contractual relationships that the Debtor will operate after the effective date. Accordingly, the argument that the injunction prevents them from exercising rights under the CLO agreements is just not true.

Similarly, Your Honor, the term consummation is not vague either and does not mean what the Appellants contend. Consummation is a commonly-used term and has been defined by the Fifth Circuit and the Code. Section 1101(2) defines substantial consummation as the transfer of assets to be transferred under the plan, the assumption by the Debtor of the management of all assets and property dealt with by the plan, and the commencement of distributions under the plan.

While consummation of the plan may be broader than substantial consummation, again, it does not mean preventing parties from exercising their rights under post-effective date commercial contracts.

So, again, an injunction that prohibits acts to interfere with consummation of the plan and an exculpation that protects exculpated parties from being sued for negligent -- for actions taken in connection with consummation of the plan do not have the far-reaching effects the Appellants claim in their motion.

Your Honor, I would now like to turn to standing of the Appellants to prosecute the appeals. As we all agree, under Fifth Circuit law, bankruptcy appellate standing requires appellants to demonstrate they are persons aggrieved. The Appellants have the burden to demonstrate that they are directly and adversely or pecuniarily affected by the order and that their alleged injuries are not conjectural or hypothetical.

With the clarification of the meaning of implementation and consummation that I just discussed, the Appellants cannot meet their burden.

One more overarching comment that applies to the standing of all Appellants. They each argue, and Mr. Rukavina stressed it today, that, because they are subject to a plan injunction, that, by definition, they have appellate standing under *Zale*.

But Appellants misread *Zale*. In that case, the debtor obtained an injunction, the stated purpose of which was to prevent appellants from bringing claims against an insurer relating to a global settlement in which the appellants were left out. The Fifth Circuit rightfully held that where an injunction specifically barred those parties from pursuing their rights, they had standing to appeal. That is a far cry from the standing to appeal an injunction in a plan which is not party-specific but applies to the world to prevent anyone from interfering with the plan.

If Appellants are right, then in every case where there's a confirmed plan that contains an injunction, and they all do, that any party in the world would have standing to appeal because their rights are theoretically affected by the injunction. That just isn't the law. Something more, some tangible injury is required to confer standing on the Appellants.

In addressing the standing, lack of standing, I want to put the Appellants into three buckets. The first bucket are Dugaboy, Get Good, and Dondero, who filed joinders to the motion. None of these parties have legitimate claims in the case, and the Court found at confirmation that their interests were extremely remote and their objections not filed in good faith.

None of these parties have colorable Class 8 claims or are

harmed by the purported violation of the absolute priority rule.

None of these parties were harmed by the failure of the Debtor to file the 2015.3 reports.

None of these parties have attempted to assert claims against any of the exculpated parties that their concern will be lost if the exculpation provision is affirmed on the appeal.

And none of these parties have any ongoing business relationships or dealings with the protected parties such that the gatekeeper provision will actually have more than a theoretical effect on them. Why is there the gatekeeper provision in the plan? It prevents them from harassing the protected parties.

Mr. Dondero's counsel makes a new argument today in his comments, that because he is a defendant and because he will be pursued, he has a vested interest in making sure the assets are sold for as much as they can be sold for. If that's the case, Your Honor, every defendant in every bankruptcy matter would have the same argument. He hasn't presented any law, and I suspect he can't, to demonstrate standing.

Based upon the foregoing, Your Honor, Dugaboy, the Get Good Trust, and Mr. Dondero are not persons aggrieved by the confirmation order, as any effect on them is only conjectural or hypothetical.

Next, Your Honor, the Advisors. The Advisors argue, without authority, that because they are purportedly harmed by the plan, they can raise any infirmity with the plan, even if it does not affect them. They don't cite any authority for that proposition, and it doesn't make sense. In fact, the 2009 Southern District case of *Cypress Wood* is to the contrary, where the court stated that courts across the nation have determined that parties in interest may only object to plan provisions that directly implicate its own rights and interests.

If the appellate court reverses on the absolute priority rule or the 1129(a)(2) issues, which it won't, the Advisors' rights will not be affected at all.

Recognizing that the standing to appeal on the basis of a perceived violation of the absolute priority rule was tenuous, the Advisors attempted to manufacture standing by acquiring the claims of four employees who were terminated by the Debtor and now presumably work for the Advisor as one of the -- at one of the Dondero companies.

In fact, the Debtor could, if it wanted to, object to the transfers of the claims on a lack of good faith, that there is case law that says you can't acquire a case -- claims for the purpose of standing if it demonstrates good faith.

Notably, they acquired those claims on Wednesday, after -- long after the filing of their stay motion and after the

Debtor filed its opposition.

Putting aside acquiring -- whether -- putting aside the issue of whether acquiring these claims at this juncture, when none of those creditors appealed the order, none of those creditors objected to confirmation of the plan, could magically confer standing on the Advisors, which we say they can't, the fact is these claims are not valid. The Court heard testimony at various hearings, including with respect to the KERP motion and plan confirmation, that the Debtor intended to terminate the vast majority of its employees at or soon after confirmation, and that the termination of the employees prior to the vesting of their bonuses would eliminate those claims for bonuses. No one ever challenged that position.

Accordingly, since the four employees whose claims the Advisors purportedly acquired were terminated, those claim don't exist, and, in any event, would not be more than $40,000.

But Your Honor, there is more to the story, and it is reflected in the objection to these and other claims which the Debtor filed yesterday. It's not before Your Honor, but I think it's perspective Your Honor needs to be aware of in considering whether the Advisors have standing relating to these claims.

As the Court will recall, the Debtor obtained approval of

a KERP program that would have entitled a number of employees who were not expected to be with the Debtor long-term after confirmation to a cash payment if they signed a separation agreement. The employees whose claims were purportedly purchased by the Advisors are four of those 54 employees. None of them signed the separation agreement. As set forth in our objection, we are informed and believe that Mr. Dondero told them he would not hire them if they signed the agreement. Rather, we're informed and believe that Mr. Dondero required these employees to transfer the claims to one of his entities as a condition of their continued employment.

But there is more. As reflected in our claims objection, we have recently learned that the Debtor -- that certain of the Debtor's employees, acting on their own and without any approval from Mr. Seery or the independent board, changed the vesting requirements for the award letters that were given to employees in connection with the 2019 contingent award granted in August 2020 for services rendered in 2019.

What did that change do? It purportedly provided that the Debtor would remain on the hook for the 2019 contingent bonus award even after the Debtor terminated their employment, provided the employees continued to work for an affiliate. And what were the specific affiliates that were identified in the amendment, Your Honor? Highland Capital Management Fund Advisors, NexPoint Advisors, and NexPoint Securities.

These changes are not enforceable against the Debtor for a variety of reasons. The Debtor is continuing its investigation, and wouldn't be surprised to learn that these changes were orchestrated by Mr. Dondero in an attempt to stick the Debtor with a continuing liability where none were expected to exist.

Again, Your Honor, I don't raise these issues to litigate them now. I realize I was testifying from the podium. They will be litigated in connection with our claim objection. But I raise them in the context of the standing that the Appellants -- the Advisors have attempted to manufacture.

The Advisors also argue that they have standing to appeal the injunction because it prohibits the Advisors from advising or causing their clients to exercise their contractual rights against the Reorganized Debtor pursuant to the CLO management agreements.

Nothing, Your Honor, prevents the Advisors from advising their clients to do anything. It's not the Advisors that have commercial relationships with the Debtor under the CLO. It's the Funds. And those relationships with the Funds are they are investors in a fund that the Debtor manages. The Advisors are simply free to provide the Funds with any advice they want to.

Moreover, with the clarification I provided earlier, there is just no merit to the argument that the injunction in the

plan will affect the Advisors' advice to the Funds regarding the CLO agreements.

Advisors also say that the gatekeeper infringes on their ability to assert claims post-confirmation. As it relates to the CLO agreements, it's not the Advisors who have those claims, theoretically, but it's the Funds. And if the Advisors, as I think was indicated in a footnote in Mr. Rukavina's pleadings, are concerned that the gatekeeper provision impacts their ability to assert claims under the remaining commercial relationships they have with the Debtor with respect to shared services, that's incorrect as well. The February 24th order, Your Honor, and the subsequent agreement between the Advisors and the Debtor both provide that the bankruptcy court has exclusive jurisdiction to resolve any disputes between the parties.

Accordingly, it's not the gatekeeper provision that will require the Advisors to litigate in bankruptcy court, but rather that order and the agreement.

Lastly, Your Honor, are the Funds. They argue that the injunction provision prevents them from seeking to terminate the CLO agreements and exercising their rights thereunder, and for the reasons I discussed, they're wrong. It is the January 9th order that prevents the termination of the Debtor as the manager of the CLO agreements, and that issue is being litigated in connection with a preliminary injunction hearing

that Your Honor will hear next week. If the Debtor wins, then the Funds cannot seek to terminate the CLO management agreements. If the Debtor loses, nothing in the plan will prevent the Funds from exercising whatever rights they have to terminate the CLO agreements, subject to all applicable defenses.

What is impacted by the plan is the assertion of affirmative claims they may have, which would have to be presented to the Court under the gatekeeper provision.

And while it is not before the Court today, Your Honor, I do want to respond to the comments in the Funds' reply and also the comments made by Mr. Hogewood earlier that they are not related entities under the January 9th order. As hard as the Funds try, they cannot disentangle themselves from Mr. Dondero. Mr. Hogewood testified at the podium. We believe the testimony he gave is not consistent with the prior testimony that has been given by Mr. Dondero, Mr. Post, and Mr. Norris. The Funds' continuing assertions that they are managed by an independent board of directors has not convinced the Court that they're truly independent.

Your Honor has heard the testimony. Your Honor has assessed credibility. And most importantly, Your Honor has seen what's happened in the last few months of litigation with them. None of these so-called directors have ever testified to the Court, and up until these motions, the Funds and

Advisors have been in lockstep, asserting the same issues by the same counsel with the same witnesses for Advisors. You heard at the last hearing that the Funds wouldn't agree -- wouldn't force Mr. Dondero to do the shared service agreement because they didn't -- because Mr. Dondero needed to be in the -- in the facility.

There is no evidence that there is independence, and Mr. Hogewood's comments are just not well taken.

And the Court found in the confirmation order that the Funds are marching to the order thereon controlled by him. Those findings will be entitled to great deference, and it will be hard for them to be overturned on appeal. And the findings are sufficient in and of themselves to cause the Funds to come within the definition of related parties. But, again, that's not before Your Honor today.

In any event, for purposes of this motion, it's clear that neither the exculpation provision or the injunction provisions will affect the Funds' rights after the effective date, and they cannot establish standing to appeal with respect to those provisions.

The Debtors do acknowledge that, solely with respect to the gatekeeper provision, the Funds have standing to appeal that issue because of the requirement that they first come to the bankruptcy court before asserting claims under the CLO management agreements.

I would now like to turn to the merits of the motions and explain why the extraordinary remedy of a stay is not appropriate. The Appellants cannot demonstrate that they are likely to prevail on the merits of any of the issues they contend the Court erroneously decided, nor do they raise issues that are in serious dispute.

Let's first take the absolute priority rule. The Advisors repeat the arguments they made at confirmation that the plan violates the absolute priority rule because Class 10 and Class 11 interest holders can receive property after all Class 8 -- or that they can receive a contingent interest that is property but that will only receive a distribution until after all Class 8 and Class 9 creditors are paid in full with interest.

As I mentioned previously, Your Honor, the Advisors have no business making this argument because it doesn't affect them, and we challenge their standing on the claims they purchased. That claims acquisition was a last-minute gimmick, and a poor one, for the reasons that I just went over a few minutes ago.

On a more substantive level, though, Your Honor, the argument fails now for the same reasons it did at confirmation, and it hardly rises to an issue that they're likely to prevail on appeal.

The Advisors don't cite any new case law, make any new

arguments. They just claim that the Court got it wrong.

Importantly, the Advisors have not cited any case that concerned a fact pattern even remotely like the fact pattern in this case, of course, other than the *Introgen* case that just rejects their argument on strikingly similar facts.

Advisors continue to misconstrue the meaning and the purpose of the absolute priority rule. The rule is meant to prevent equity holders from receiving properties that senior creditors are entitled to until the -- unless the senior creditors consent or are paid in full.

The corollary to the rule which the Advisors brush aside is that no creditor can receive more than a full recovery based upon value determined at confirmation. The plan is faithful to both those concepts.

First, the Debtor does not dispute that the contingent interest is a property right, but that's not the end of the story. The language that the Advisors conveniently omitted from their brief from the Supreme Court *Ahlers* decision says that a retained equity interest which would violate the property -- the absolute priority rule is a property interest to which the creditors are entitled before shareholders can retain it for any purpose. Under the plan, the property interest that the Class 10 and Class 11 creditors are receiving is a springing contingent interest payable only after Class 8 and Class 9 holders are paid in full.

That interest, the right to receive payment after creditors are paid in full, is not an interest to which the creditors are entitled. It is, by definition, an interest that equity is entitled to after creditors are not entitled to receive anything more. Class 10 and Class 11 creditors are not entitled to receive anything until that time. They're not the beneficiaries of the Trust. They have no right to control the Claimant Trust. They can't transfer their interests.

As the *Introgen* court reasoned, the right is imaginary and nonexistent until creditors are paid in full, plus interest, as provided under the plan.

So, accordingly, the contingent interests held by the holders of the Class 10 and Class 11 claims are not property that creditors should receive under a straightforward application of the absolute priority rule.

Moreover, the plan provided for this contingent recovery to Class 10 and 11 creditors to avoid a valuation fight over the value of the Debtor's litigation claims at confirmation. As Your Honor is aware, the Debtor's assets consist of cash, publicly-traded stocks, interests in private equity, and causes of action. The Debtor had a good idea of the value of the non-litigation claims as of confirmation, and those values form the basis of the plan projections, which reflected that Class 8 general unsecured creditors were to receive approximately 70 cents on the dollar.

However, the Debtor did not provide at confirmation a value of the litigation assets as they existed at confirmation. Pursuit of those litigation assets which existed at the time of confirmation at some value could result in Class 8 and Class 9 creditors receiving more than a hundred percent on their claims. So what? To avoid a confirmation fight -- a valuation fight at confirmation where the Dondero parties would have undoubtedly argued that the value at confirmation of the Debtor's assets could result in payment in full or more to Class 8 and Class 9 claims, thus violating the absolute priority rule, the Debtor provided that any excess proceeds would be paid to the Class 10 and 11 interest holders.

Advisors brush this argument aside, claiming that debt-for-equity plans that are routinely approved provide that creditors may receive more than a hundred percent on their claims, and they say that the Supreme Court precedent gives this future upside to the creditors, not the equity holders. But the Advisors, Your Honor, miss the point. The debt-for-equity plans that Advisors point to give the creditors upside based upon future appreciation of value. The upside that the Debtor gives the Class 10 and the Class 11 interest holders is the contingent upside based upon value that existed as of confirmation.

Case law is clear that creditors cannot receive more than

a hundred percent of their claim based upon value at confirmation, and the plan is faithful to that proposition.

Turning to 1129(a)(2), Your Honor, all Appellants except for the Funds argue that the Court erred in confirming the plan because the Debtor did not file reports required by 2015.3 and thus could not satisfy 1129(a)(2) of the Code because the Debtor as the proponent of the plan has not complied with the applicable provisions of this title. Essentially, they argue that 1129(a)(2) is a strict liability statute and if the Debtor has violated one provision of the Code or Rules, no matter what, no matter what the context, and no matter who it affects, the Court cannot confirm the plan. Not raising this issue in their confirmation objections and waiting until the confirmation hearing was the quintessential "gotcha" moment. Had it really been a good faith objection, Your Honor, they would have raised it long ago. In any event, the argument fails for four reasons.

First, as reflected in the case law we cite in our opposition, courts in this jurisdiction have held that Section 1129(a)(2) is geared at making sure that the debtor as plan proponent complies with its disclosure obligations under Section 1125 and not requiring adherence to every code section and every rule.

Second, even if Section 1129(a)(2) is applicable, as the Southern District of Texas held in the *Cyprus Wood* case, this

section is not a silver bullet that allows creditors to defeat confirmation based upon any infraction committed by the debtor. *Cypress Wood* is not an outlier, as courts around the country have reached the same conclusion.

Third, failure to file the reports in this case, Your Honor, was harmless error. As the Court knows, the Debtor operates under court-approved protocols and has been transparent with the Committee from the commencement of the case. The Committee has substantial rights to oversee the Debtor's operations, and there was just no evidence presented at confirmation that the Committee hasn't received all relevant information regarding the Debtor's operations, asset sales, and transfers, and the value of its holdings.

Fourth, the cases cited by the Appellants are distinguishable. None of them involved failure of a confirmation because of a violation of a bankruptcy rule. In each of the cases, the debtor committed multiple material violations that went to the debtor's credibility, its transparency with creditors, and the indifference of their obligations as a debtor-in-possession. None of these cases were remotely similar to the case that we have here and support the denial of confirmation.

Next, Your Honor, I want to turn to the exculpation provision. The Appellants all argue that the Court exceeded its authority in approving the exculpation provision, which

they describe as unprecedented, far-reaching, and it tramples their rights.

As I discussed previously, Your Honor, the concern that the exculpation provision applies post-effective date to business decisions is just plainly wrong. It only applies post-effective date to narrow substantive issues relating to implementation and consummation of the plan and do not impact the ability to assert post-effective-date claims or enforce post-effective-date rights under assumed contracts.

I know, Your Honor, that both the exculpation provisions in *Pacific Lumber* and *Thru* applied to matters relating to implementation and consummation of the plan. We acknowledge, of course, that those exculpations were struck down for reasons distinguishable for this case. However, the Court found those provisions unacceptable because they applied to non-debtors, not because they applied to events occurring after the effective date relating to implementation or consummation of the plan.

Putting that issue aside, Your Honor, the principal argument Appellants rely -- raise is that the Court's ruling is directly contrary to the Fifth Circuit's opinion in *Pacific Lumber*. However, the Court was very careful in its ruling not to run afoul of *Pacific Lumber*, and, in fact, its ruling is consistent with *Pacific Lumber* and will not require any change in Fifth Circuit law.

First, the Court relying on *Pacific Lumber's* citation to the Fifth Circuit's prior decision in *Republic v. Shoaf*, the Court held that the Court has already exculpated the independent board, the CEO, the CRO, and their respective agents, pursuant to the January 9th and July 16th orders. As those orders were final, not appealed by the Court [sic], they are the law of the case and conclusively establish the exculpation of those parties independent of the exculpation provision of the plan.

The Advisors argue in their reply that these orders do not exculpate the parties for negligence and are only gatekeeper provisions. This argument, which they make in their reply for the first time, lacks any evidentiary support. Rather, the uncontroverted evidence at confirmation was to the contrary. Mr. Seery and Mr. Dubel, two of the three independent board members, testified at confirmation that they both understood that the January 9th order, and as it related to Mr. Seery the July 16th order, provided exculpation for negligence in the performance of their duties. They both testified that they would not have undertaken their role as independent director or CEO if they were not assured of exculpation.

Accordingly, the Advisors' argument that these orders did not provide for exculpation because they didn't use the word exculpation is just flat-out wrong.

The Advisors next argue that these orders were case

administration orders and were not intended to apply post-confirmation. So the Advisors would have the Court believe that the independent directors, who were concerned about exposure to frivolous litigation in this highly-contentious case, expected they would be protected from negligence and have the benefit of a gatekeeper provision during the case but they would be open game to be sued for anything anywhere after the case was concluded.

That argument is preposterous and certainly doesn't find any evidentiary support in the record.

With all due respect to Mr. Rukavina, who is a late entrant into this case, he is in no position to tell the Court what was or was not intended in connection with those orders.

Similarly, the argument that the orders must expire on confirmation because the Court lacks jurisdiction thereafter is illusory. The Court certainly has and retains jurisdiction post-confirmation to enforce orders that it's entered during the case.

Now, the Debtors do agree with the Appellants that the January 9th and the July 16th orders do not exculpate all of the exculpated parties under the plan. This is where the exculpation provision comes in. The Court found that the exculpation provision of the plan was consistent with *Pacific Lumber* for two reasons.

Initially, since the Fifth Circuit did approve exculpation

for Committee members, it is clear in the Fifth Circuit that there is no categorical prohibition on non-debtor exculpations. The Court rightfully found that the Fifth Circuit's rationale for exculpating Committees and their members was equally applicable to exculpating Strand, independent directors, the CEO, the CRO, and their respective agents. The Court found that these parties were analogous to Committee members rather than to incumbent directors and officers. They came into this highly-litigious case post-petition and would not have been willing to serve without exculpation for negligence.

The Court has also found that without the protection for exculpation for negligence suits from parties unhappy with their performance in the case and the outcome of the case, independent directors in general would be unwilling to serve in highly-contentious cases in the Fifth Circuit, which would be a setback for modern-day complex restructurings.

The Court also read *Pacific Lumber's* limited rejection of exculpation provisions as resting on a key factual finding that distinguished that case from this case. The Court rightfully determined that exculpation is appropriate if there is a showing that the costs that released parties might incur defending against such suits, such as negligence, are likely to swamp either the exculpated parties or the reorganization. Given the substantial costs that the Debtor has had to face

during this case litigating with the Dondero entities, the Court had no trouble finding that in this case the potential for litigation and the exculpated parties could swamp the reorganization, and for this reason determined that *Pacific Lumber* supported the Court's ruling.

Accordingly, Your Honor, this Court's ruling on exculpation provisions is entirely consistent with *Pacific Lumber* and the Appellants are not likely to succeed on appeal.

Your Honor, the Appellants are also not likely to succeed on appeal with respect to the appeal of the injunction provision. The Appellants often conflate the injunction provision with the gatekeeper provision. I will first address the injunction provision, which is really the first three paragraphs of Article 9(f) of the plan. The Funds argue that the injunction provision prohibits actions against non-debtors and is an impermissible third-party release. It is not. The injunction provision applies to the Debtor and its successors, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust.

The Funds argue that it enjoins claims against protected parties. That's incorrect. Protected parties does not appear in the first three paragraphs of Article 9(f).

The Advisors' main argument is that the injunction provision is too broad because it prevents actions to interfere with the implementation and consummation of the

plan, and as I said earlier, my comments should alleviate the Advisors' concerns. We're not seeking to enjoin enforcement of contractual rights by use of the term implementation and consummation.

Appellants' argument that this injunction -- the injunction provision here in this case is broader than the injunction rejected by the district court in *Thru* is misleading. The only issue in *Thru* was whether it impermissibly applied to non-debtor third parties. That is not the issue here, as the injunction provision only applies to the Debtor and successors. *Thru* did not address whether or not -- an injunction extending to matters relating to implementation and consummation of the plan, as is the case we have here.

Lastly, Your Honor, the Appellants cannot demonstrate a likelihood of success with respect to the gatekeeper provision. The Court's determination to approve the gatekeeper provision was a mixed question of fact and law. Based upon the uncontroverted evidence at confirmation, the Court found that the Dondero entities' history of litigation, both prior to this case and during the case, justified the Court's approval of the gatekeeper provision.

The Court also heard uncontroverted testimony from Mr. Seery that the continued threat of harassing litigation from the Dondero entities would threaten success under the plan.

So, based upon the foregoing, the Court concluded that there was an evidentiary showing as to the need for a gatekeeper provision, a finding that is unlikely to get overturned on appeal.

The Appellants raise two arguments on why the gatekeeper provision is unlawful and is likely to get overturned on appeal. First they argue that the Court did not have authority to approve the gatekeeper provision. Second, they argue that the Court will not have jurisdiction to perform the gatekeeper function. Neither argument has any merit.

The Court relied on several provisions of the Bankruptcy Code providing for a gatekeeper provision in aid of implementation of the plan, including Section 105 and 1123(b)(6) of the Code. The Court also relied on the Fifth Circuit cases of *Carroll* from 2017 and *Baum* from 2008 for the authority of a court to deal with serial litigants by imposing a gatekeeper provision. And as we briefed, gatekeepers are not some new intervention, but have been approved by courts in this district, including Judge Lynn in the *Pilgrim's Pride* case and Judge Houser in *CHC Group*.

Similarly, Your Honor, the argument that the Court lacks jurisdiction to act as the gatekeeper fails. Excuse me, Your Honor. The Debtor agrees that the Court's jurisdiction is more limited post-confirmation. And that may ultimately mean that a court may not have authority to adjudicate each and

every claim relating to the post-confirmation period that comes before it, but it doesn't mean that the Court cannot act as a gatekeeper to determine if colorable claims exist. Appellants continue to ignore the Fifth Circuit's opinion in *Villegas*, where the Fifth Circuit said that a bankruptcy court may act as a gatekeeper under *Barton* to determine if a claim exists, even if the court will not have authority under *Stern* to adjudicate that claim. That's exactly what's going on here.

Accordingly, Appellants are not likely to prevail on appeal on this issue of the propriety of the gatekeeper function.

Next, with respect to harm, Your Honor, the Appellants must demonstrate that they will suffer irreparable harm if the stay is not granted. This they cannot do.

First, Appellants argue that, because their appeals may be rendered moot without a stay, that constitutes irreparable harm. This argument proves too much, Your Honor. If Appellants are correct, then any party objecting to confirmation of a plan that might be rendered moot without a stay would be entitled to a stay, and that's not the law.

Your Honor presided over a case last year called *SR Construction v. Palm Springs*, where Your Honor refused to grant a stay pending appeal of an order approving a credit bid. You were affirmed by the district court, which rejected

mootness as constituting irreparable harm, reasoning that: The Court agrees with the majority of courts in the circuit, finding that the risk of mooting a bankruptcy appeal standing alone does not constitute irreparable harm warranting a stay.

Appellants' remaining arguments suffer from the same misinterpretation of the language implementation of plan and consummation of the plan that I have previously discussed in the context of standing. Appellants are concerned that the injunction will prevent them from seeking to terminate the CLO agreements or exercising rights thereunder and the concern that the exculpation will prohibit them from asserting post-effective-date claims.

Preliminarily, these arguments only apply to the Funds, if at all. Neither Dondero, Get Good, Dugaboy have any -- or the Advisors have any post-confirmation contractual relationship with the Debtor other than the ones with the Advisors which I mentioned previously.

And as I said, while the Debtor and the Advisors were parties to shared service agreements, those agreements were terminated and the Court reserved exclusive jurisdiction over any remaining disputes, as well as in connection with the shared resource agreement that the parties have entered.

Nothing in the plan impacts the Advisors' ability to pursue whatever rights they have under the February 24th order relating to shared services or the shared resources agreement.

And the Funds are wrong that either the injunction provision or the exculpation provision affects their right under the CLO management agreements. The Funds', as I said, right to terminate the CLO management agreements will be determined by the existing adversary proceeding which is scheduled for hearing next week.

Thus, the plan does not insulate the Debtor and other parties from liability, which, under the applicable CLO agreements, in any event, limits such claims to negligence, willful misconduct, or fraud. Nor does the plan prevent the Funds from exercising their contractual remedies. It just prevents enjoined parties from filing an action before getting court approval and allowing that action to go through the gate.

Your Honor, turning to the harm that the Debtor and the creditors will suffer, they will suffer substantial harm, which basically the Appellants gloss over. They continue to argue that there's no harm, there's no exit financing, the Debtor can just do what it's doing, and that liquidating its assets, really, no harm, no foul. However, they're wrong, and the Debtor will be harmed in three significant ways.

First, as Mr. Seery provided uncontroverted testimony at the confirmation hearing, that the value of the Debtor's assets would be enhanced by eliminating the burdensome restrictions the Debtor operates under in Chapter 11.

Second, remaining in Chapter 11 will substantially increase professional fees compared to what they would be at confirmation. The Committee will still exist, with their complement of professionals, and the Dondero entities will likely continue to object to virtually every motion, requiring needless evidentiary hearings and likely more appeals.

Third, the creditors' rights to receive recoveries will be delayed. The argument that the delay can be compensated by a bond for interest at the federal judgment rate, which is less than 10 basis points, is farcical. These creditors have waited years, and in some cases more than a decade, to receive payment. Paltry interest is hardly sufficient compensation.

Accordingly, the Appellants cannot come close to demonstrating that the Debtor and its creditors will not be harmed.

And lastly, Your Honor, with respect to public interest, the Appellants argue that public interest is served because it's necessary to respect the contractual rights of various parties, protect the interests of thousands of investors, prevent the Debtor from violating the securities laws, and respecting and upholding precedent. Your Honor, while these words sound good, they really don't apply in this case. The Dondero entities are the only parties who have tried to get in the way of confirmation of the plan. It is the Dondero entities who are pursuing their agenda and their intent and

attempt to invoke the interests of innocent public retail investors, none of whom have ever appeared in this case, have any claims against the Debtor, or have any contractual relationship with the Debtor, should ring hollow to the Court.

As the *Yucaipa* court that we cite in our materials noted, in talking about the public interest, courts recognize the strong need for -- public need for finality of decisions, especially in bankruptcy proceedings. The public interest requires bankruptcy courts to consider the good of the case as a whole and not individual investment concerns. The public interest cannot tolerate any scenario under which private agendas can thwart the maximization of value.

Your Honor, the Court should not let the Dondero entities' agenda get in the way of the case any more than it has already done.

And lastly, Your Honor, with respect to the bond, if the Court is inclined to grant the motions, Appellants are required to post a bond to protect the Debtor from any harm resulting from the imposition of the stay and the delayed effective date. Appellants now agree that their initial proposal of a million dollars was insufficient to cover the additional costs of the case remaining in Chapter 11. Their new proposal in their reply, that the amount of the bond should be $3 million -- and I think Mr. Rukavina even upped that to $4 million -- is based on the faulty premise that

keeping the case in Chapter 11 will only result in an increase of professional fees per month of $125,000 compared to what it would be outside. Appellants don't seem to have been paying attention to the significant expenses the estate has been forced to incur because of Appellants' actions in the Chapter 11 case.

If the Debtor remains in Chapter 11, we'll have to seek approval of a variety of actions required by the Bankruptcy Code, including the monetization of assets, resolution of claims, retention and compensation of professionals. And if past is prologue, Your Honor, the Debtor can expect the Appellants in one form or another to object to many of these actions, objections which will involve discovery, an evidentiary hearing, and likely appeal, expenses that will not be necessary if the plan goes effective.

Accordingly, the argument the keeping the Chapter 11 cases going at an additional monthly cost of $125,000 while the appellate process plays out is fantasy. While no one has a crystal ball, Your Honor, to determine what the actual amount of the costs will be, the Debtor's proposed analysis, comparing average fees during the course of this case to those projected post-effective date, is as good a proxy as any. Therefore, Your Honor, the Debtor asks that if the Court is inclined to grant the stay that the Court condition the stay on the posting of a $17.4 million bond.

Thank you, Your Honor.

THE COURT: Okay. Thank you. All right. I'll hear rebuttal from the Movants.

MR. CLEMENTE: Your Honor, if I may? Your Honor, if I may?

THE COURT: Oh, I'm sorry.

MR. CLEMENTE: Matt Clemente, Committee --

THE COURT: I'm sorry.

MR. CLEMENTE: No, no. No need to apologize. Absolutely not, Your Honor.

THE COURT: Okay.

MR. CLEMENTE: I only have a minute or two, --

THE COURT: Okay.

MR. CLEMENTE: -- if Your Honor will indulge me, quickly.

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF THE CREDITORS' COMMITTEE

MR. CLEMENTE: Thank you, Your Honor. Again, Matt Clemente on behalf of the Committee, for the record.

Your Honor, you carefully considered a full record that was before you at the confirmation hearing, and you rendered a very thoughtful and detailed ruling and decision based on the voluminous record that was before you in this case, not just at the confirmation hearing but throughout the duration of this case since, I believe, late 2019, when it first came in

front of you.

Nothing in the Movants' arguments, Your Honor, raises any new issues that were not carefully considered by the Court in a thoughtful manner.

So, in short, Your Honor, Mr. Pomerantz effectively addressed and laid out the issues with respect to the Movants' request to stay, but they have failed to meet their incredibly high burden of the extraordinary remedy of giving a stay of a confirmation order.

Your Honor, additionally, from the Creditors' perspective, and Mr. Pomerantz touched very briefly on this, as Your Honor knows, many of the creditors here have been waiting, sometimes as long as a decade, and any delay occasioned by the stay will cause further harm to those creditors, Your Honor.

As Your Honor knows, the plan that Your Honor confirmed was heavily negotiated with the Committee, and the Committee believes it will serve, among other things, to reduce costs, allow for the efficient and timely distribution to creditors, provide a mechanism to vindicate claims against Dondero and his tentacles, and provide a detailed and carefully-constructed process and procedure to allow for the maximization of the assets through the monetization and the pursuit of claims.

Your Honor, the Committee believes that going effective is the way -- is in the best interest of the creditor

constituency, after carefully and thoughtfully considering the alternatives, including languishing in bankruptcy as suggested by the Movants.

Your Honor, I refer you to the rest of our arguments in our objection and joinder that we filed, but we believe that the Movants' motion for a stay should be overruled and that there should be no stay granted.

Your Honor, that's all I had for you. If you have any questions for me, I'd be happy to address them.

THE COURT: All right. No questions. All right.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: I'll hear anything further now from the Appellants collectively. I guess I'll start with Mr. Hogewood, since you went first before. Anything at this point to add?

MR. HOGEWOOD: Yes, Your Honor. Just very briefly. I believe that I heard Mr. Pomerantz acknowledge that the Funds had standing on a narrow point, and standing is standing, so I'll take that.

I don't think I testified from the podium. Rather, I summarized testimony that Mr. Post and others provided during the course of the confirmation hearing.

The gatekeeper provision goes well beyond what the Fifth Circuit has previously permitted, and that is of grave concern to our client, as well as the finding related to control. And

for those reasons, we are seeking a stay.

And then there was a reference to these --

THE COURT: Can I ask you a question? You say you perceive that the gatekeeping provision goes well beyond anything that the circuit has allowed. But what about my colleagues in the Northern District of Texas? Do you think this is broader than what retired Judge Lynn permitted in *Pilgrim's Pride* or our former Chief Judge Houser allowed in *CHC*?

MR. HOGEWOOD: Well, Your Honor, in this context, my clients' contracts and the CLO contracts have been assumed, and in order to exercise rights under those contracts we're obligated to seek permission. And we should be able to proceed under the terms of those contracts, and I don't think that we can do that under the current gatekeeper provision.

To the extent that that is similar to gatekeeper provisions decided by other bankruptcy judges, I -- it may be the same, but it is -- I don't -- but it is not yet the law of the Fifth Circuit, and I think that's a reason to grant a stay pending appeal, to determine whether the provisions in this plan are permissible within the Fifth Circuit.

THE COURT: Okay. Thank you.

MR. HOGEWOOD: The last thing I wanted to just briefly touch upon is I think there was a mention that we contest that we're related parties under what the January 2020

order. We weren't parties to that order. We did not consent to it on behalf of the Funds.

Even if we are related parties, that prohibition relates to Mr. Dondero. Mr. Dondero is prohibited from directing related parties to take specific action. And I understand that the Debtor disagrees that the Funds function independently. The Court has made findings on that subject, that they do not function independently. But that is one of the main reasons for which we are seeking both a stay and are pursuing this appeal, to ask the appellate court to correct those conclusions.

So, with that, Your Honor, we ask you to stay the confirmation order pending appeal, and I have nothing further. Thank you.

THE COURT: All right. Thank you. Mr. Rukavina?

MR. RUKAVINA: Your Honor, thank you. And I'll be brief.

On this employee claim transfer issue, Your Honor, when those issues come up before you, you'll see that the employees transferred their claims in late February or early March. They did so because my clients basically gave them the years of credit for seniority that they had at the Debtor with respect to our bonus plans. In other words, we're trying to make good what they lost with the Debtor. And in exchange, they assigned their claims to us.

The reason why I didn't file the 3001 notices until yesterday is because it wasn't until Friday night that the Debtor challenged my standing, even though the Court found I had standing at the confirmation. So I got the employees as fast as I could.

In other words, nothing to do with that had anything to do with engineering standing, and I question why Mr. Pomerantz would have a good faith basis for saying that.

As far as what I heard for the first time today, that some employees tampered with the books and records of the Debtor, I have no idea what the Debtor is talking about. I'm sure it'll come out in due course. But I hope that there's a good faith evidentiary basis for having made those statements.

Your Honor, if we look at -- and Your Honor doesn't have to pull it up; I'm not suggesting that you do -- but it's in the record. On Page 198 of the first day's confirmation trial, I asked Mr. Seery about the injunctions and I asked, and I'm quoting now, "Do I understand correctly that this provision we've just read means that, upon the assumption of these CLO management agreements, if the counterparties to those agreements want to take any action against the Reorganized Debtor, they first have to go through this channeling injunction?" Mr. Seery answers, "I believe that's what it says, yes."

And now, to paraphrase, I continue asking him, and I say,

"Because the wind-down of the business of the Reorganized Debtor will include the management of these assets?" And he says yes.

And also, very briefly, on Page 206 of that same transcript, and I'm paraphrasing now, I asked Mr. Seery to tell me what the interference with the implementation or consummation of the plan means, and he answers, now I'm quoting, "That it means in some way taking any actions to upset, disrupt, stop, or otherwise prohibit or hurt the estate from implementing or consummating the plan." Then I ask, "Is this intended to be very broad?" And he says yes. Then I ask him to be more specific, Your Honor. Mr. Morris objects based on form, and the Court sustains that objection before I may respond to it.

So I hope the Court will forgive us for being very concerned about these injunctions, especially when, in the last two months, we had a mandatory injunction hearing before Your Honor where the Debtor alleged massive, massive irreparable injury, just to concede that its request was moot, and based on tortious interference we had a hearing in January where the Debtor admitted that it closed its sales, there was no interference, and all that happened was that our employees, our employees, refused to do something that Mr. Seery requested.

So when I hear Mr. Pomerantz say, whoa, whoa, whoa, these

are actually very narrow provisions, Mr. Rukavina is not smart enough to understand what I'm saying, then I would suggest, Your Honor, that the Debtor do a plan modification and moot a lot of our objections. If Mr. Pomerantz's view of these injunctions as being narrow is true, notwithstanding what Mr. Seery testified to, then that's the proper remedy. Let's amend the plan by agreement, and if they want to moot ninety percent of our arguments, we'd be happy to do that.

We don't want to appeal. We don't want a stay pending appeal. We just don't want contempt in front of Your Honor four months from now because something that we do in good faith is brought before Your Honor as something nefarious because apparently we're all Dondero tentacles.

Your Honor, as far as the Debtor collaterally attacking its own confirmation order, now saying that, well, creditors might receive a hundred percent, on Page 41 the Court finds it's 71 percent, so I think that argument carries no weight.

And finally, Your Honor, I just want to leave you with one parting thought, because I think -- I think it is important. The Debtor has argued that we are all disrupters, that we are trying to help Mr. Dondero burn down the house. The Court, to one degree or another, seems to have accepted that view. What we have tried to tell Your Honor, at least the Advisors and the Funds, what we have tried to tell Your Honor is that there is a business dispute underlying all of this, a good faith

business dispute. The Debtor is liquidating assets worth more than a billion dollars in a manner that we'd rather the Debtor not do.

Now, the Court can decide whether the Debtor has the power to do so. It's a legitimate business dispute. I can see both sides of it. But it is that businesses dispute that is driving this appeal and this stay pending appeal.

I heard Mr. Pomerantz say that if the Chapter 11 case remains open, the Debtor will have to go to the Court to approve sales, et cetera. That's what we've been asking for for months now. We would love it if the Debtor did that, to -- in open, with transparency, with bid procedures, to sell these remaining assets. Because, well, not my clients directly, but Mr. Hogewood's clients, and my clients indirectly, own those interests in those assets. But the Debtor has never taken that position before. The Debtor has said that it gets to liquidate these assets without authority of the Court.

So if the price of a stay pending appeal is to have the Debtor have to come to the Court with approved sale processes and bid procedures, how can anyone complain about that? We will fund that stay pending appeal bond, as long as it's reasonable, any day of the week, because that's all that we've been asking for, that the Debtor not liquidate quickly and for less than appropriate value the assets that it has remaining

because it fundamentally conflicts with the rights of the underlying interest holders.

Thank you, Your Honor.

THE COURT: All right. Anyone else? Mr. Taylor?

MR. TAYLOR: Yes, Your Honor.

THE COURT: Uh-huh.

MR. TAYLOR: Yes, Your Honor. Clay Taylor on behalf of Mr. Dondero.

THE COURT: Okay.

MR. TAYLOR: To echo a little bit of what Mr. Rukavina said, and I head Mr. Pomerantz say they will have significant expenses getting court approval inside a Chapter 11, including getting permission for asset sales. One, I'm very encouraged to hear that they have now admitted the errors of their way and that they should have gotten permission for asset sales. It didn't happen before. But if we could just get adequate notice, either inside or outside of Chapter 11, that's what Mr. Dondero wants.

He wants the opportunity to bid in an open market for these assets or bring other bidders to the table. He wants to increase value. He fundamentally disagrees with Mr. Seery. And, you know, it's okay to have a disagreement on a business issue as to whether this is the best way to liquidate these assets. He wants to see if value could ever get in a waterfall down to Mr. Dondero. He wants to limit his

liability or any of those entities in which he owns or are a part of liability to the investors that they're holding their money. He wants to limit his potential liability for which these alleged alter ego claims are being brought and they say he is going to be liable for the difference in value. He also wants to make sure he preserves his reputation in the marketplace as having been a savvy investor.

So these are exactly the fundamental things that we're asking for that weren't done before. That's why we're asking for a stay pending appeal, so they actually either, one, have to provide the proper notice as required under the Code and Procedures, or alternatively, if they don't, that they can be held liable for their actions, without the exculpation and release and that we go through a gatekeeper process.

That is fundamentally the difference that we have and why we're asking for a stay pending appeal and why I try to state that succinctly and let Your Honor consider that. Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Draper, anything further from you?

MR. DRAPER: I have a small comment. Your Honor, look, you and I completely disagree on *Pacific Lumber* and its impact. You spent a great deal of time looking at it and, you know, you have your opinion and the Fifth Circuit will have its opinion, since we're going through a direct appeal.

The one point I would like to make is that I've never seen a *de minimis* limitation on somebody being a party in interest. I think that does not exist in the Bankruptcy Code. I disagree that I have a *de minimis* interest, but I don't think that takes somebody away from being a party in interest or being affected by an order, and there's no case that stands for that proposition.

So, with that, I have nothing further to say, Your Honor.

THE COURT: All right. Thank you.

MR. POMERANTZ: Your Honor, may I briefly respond? This is Jeff Pomerantz.

THE COURT: Well, no, we -- I usually let the movants have the last word, so I think we're done.

MR. POMERANTZ: Okay.

THE COURT: All right.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: My clock shows 11:06. I am going to take a break to collect my thoughts and look at these exhibits. And I'll tell you what. We'll come back in 30 minutes, at 11:36, and I'll give you my ruling.

We also have a few housekeeping matters, a couple of housekeeping matters that I want to address when we come back. You know, we have this hearing Monday on the contempt motion as to Mr. Dondero, and I just want to see where things are with the Fifth Circuit *mandamus* effort that Mr. Dondero is

pursuing. I don't know if you all will have any updates when I get back.

And then I hear that a motion for my recusal has been filed by Dondero through new counsel. When was that, Nate? Was that last night? Okay. Anyway.

THE CLERK: It was last night.

THE COURT: It was last night. So I'll just comment on that when I come back as well. So, I'll see you in 30 minutes.

THE CLERK: All rise.

(A recess ensued from 11:07 a.m. to 11:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. All right. We are going back on the record in the Highland motion for stay pending appeal. The Court deliberated a little longer than I told you I would, but the Court is ready to make a record. Is everyone out there? Hopefully, we have everyone out there that we need.

All right. Mike, can you tell, everyone is still logged in?

THE CLERK: Yes, ma'am, they are.

THE COURT: Okay. All right. The Court has decided to deny the motions for stay pending appeal of the confirmation order.

First, as we all know very well, courts in this circuit

have held that a discretionary stay pending appeal of a bankruptcy court order should only be granted if a movant demonstrates the traditional four prongs: (1) a likelihood of success on the merits; (2) some irreparable injury if the stay is not granted; (3) the granting of the stay would not substantially harm other parties; and (4) the granting of the stay would serve the public interest. Many Fifth Circuit cases have articulated these standards, including *In re First South Savings Association*, 820 F.2d 700 (5th Cir. 1987) and *Ruiz v. Estelle*, 666 F.2d 854.

The Fifth Circuit has also made very clear the party seeking a stay pending appeal bears the burden of proof on each of these elements. The Court has said that while each of these four factors must be met, the movant need not always show a probability of success on the merits when a serious legal question is involved. The Court, the Fifth Circuit, has hastened to add that this is not a *coup de grâce* for movants; still there are the other three prongs that have to be met.

So, I also want to add a reference to Judge Marvin Isgur. My Southern District of Texas colleague wrote at length on this issue in a *TNT Procurement* decision in denying a request for a stay pending appeal as to three different orders he had entered during that Chapter 11 case. In that case, he held that although the movant had met its burden of proof on the first factor, likelihood of success on the merits as to some

of the legal issues in the challenged orders, that with regard to the second factor, irreparable injury, the presence of irreparable injury is a fact issue, and the movant requesting a stay pending appeal must prove such fact by a preponderance of the evidence. And Judge Isgur held that because the movant failed to present any evidence on this prong at the hearing, there could be no proof of irreparable injury. So he denied a stay pending appeal.

So, turning to the facts and arguments here, first, before addressing the four prongs, the four traditional factors for evaluating a request for a stay pending appeal, I'm going to address the standing challenge that the Debtor has made as to the four Appellants. I determine there is standing, just as I did at the confirmation hearing, although I really want to reiterate we have a very close call on this standing argument. Clearly, we do not have traditional creditors here appealing a plan. In fact, notably, we have an Official Unsecured Creditors' Committee with large strong creditors as members who have fought long and hard with this Debtor, both before the case in many years of litigation and during the case, and they've embraced the plan.

The four Objectors, the Court continues to believe, are following the marching orders of Mr. Dondero, the company's former CEO, and are *de facto* controlled by him, based on prior evidence this Court has heard.

In any event, the Court determines that these four Appellants, these four categories of Appellants, do have some plausible argument of being persons aggrieved or affected by the confirmation order, remote as that interest is by traditional Chapter 11 standards. And so, thus, I find they have standing.

Again, for the benefit of courts hearing an appeal on this or further considering a motion for stay pending appeal, I stress that this bankruptcy judge has a very hard view on this. It's an extremely close call. Again, these Appellants are not conventional creditors affected by plan class treatment, or direct interest holders, for that matter. So it's a hard call.

But, having found technical standing, the Court turns to the evidence here with regard to the four-factor test for a stay pending appeal. And we had no witnesses. We had merely documentary evidence and argument. The Court finds and concludes that this documentary evidence and argument did not meet the burden of proof necessary to justify a discretionary stay pending appeal.

On the first factor, likelihood of success on the merits, there was at least a serious legal question raised. There were, of course, three primary legal issues raised as errors by this Court in the confirmation order. The first two arguments were not pressed too much in legal argument today,

although they were stressed in the briefing. One, the absolute priority rule violation argument; and then, two, the Bankruptcy Rule 2015.3/Bankruptcy Code Section 1129(a)(2) violation argument.

The Court considered these arguments to wholly lack merit, and are borderline frivolous, frankly. They do not raise a serious legal question.

The question of the propriety of the exculpations, the plan injunctions, and the gatekeeping provisions are a harder call. While this Court strived mightily to understand the parameters, the dictates, the exceptions of *Pacific Lumber* as to the exculpations, the Court acknowledges others may reasonably disagree that I interpreted *Pacific Lumber* correctly as to when the Fifth Circuit might extend its policy rationales for exculpations or whether it might extend the holding of *Pacific Lumber* or elaborate on the holding of *Pacific Lumber* when there's a situation like this one where we have an independent CEO and board members who are more like Official Unsecured Creditors' Committee members than typical incumbent officers and directors, and also, in an exceptional situation like this case, where there's a real risk, a real risk of burdensome and vexatious litigation going forward if we don't have in place the exculpations, the injunctions, and the gatekeeping provisions.

I think there are also *res judicata* issues that cannot be

ignored with regard to the prior January and July 2020 orders that contained similar provisions to the exculpation provisions and gatekeeping provisions.

In any event, I'm going to spot the Appellants on this one, to use a slang term, the spot being that they have raised a serious legal question as to the exculpations, gatekeeping provisions, and plan injunctions, although I stress that I think pushing the envelope, to use that phraseology, is a bit of hyperbole certainly in connection with plan injunctions, which are very common in Chapter 11 plans, and even the gatekeeping provisions, which retired Judge Lynn and retired Chief Judge Houser have approved in very significant large Chapter 11 cases.

But turning now to the other three prongs, the Appellants have not met their burden of proof. They simply have not shown they will suffer irreparable harm, certainly not because of a mere mootness risk, and that's really the only harm that I truly think has been plausibly presented or argued here by Appellants.

They cannot show there will not be substantial harm to the overall bankruptcy estate, when it undeniably will endure more administrative costs and burdens if the Debtor continues on as a debtor-in-possession in an already very lengthy case, by today's measure. A 15-month case in today's world is a long Chapter 11 case.

And the Court believes there will be a substantial harm to the legitimate creditors here, the creditors who have faced nothing but delay in pursuing their claims for years and years, some for decades now.

And as far as the public interest factor, I do agree with one comment made today that this is more about Mr. Dondero's private agenda to get his company back, the company that he decided to file Chapter 11 back in October 2019, more than about protection of the public interest or the interests of retail investors that he or the Advisors or Funds purport to be acting to protect.

So the discretionary stay is denied.

As to the possibility of a stay pursuant to a bond being posted, we used to have a local district court rule that I believe was repealed a few years ago. But even if it's still around, it's not terribly apropos for a confirmation order. It was Local District Rule 62.1, dealing with a supersedeas bond. It provided, unless otherwise ordered by a presiding judge, a supersedeas bond staying execution of a money judgment shall be in the amount of judgment plus twenty percent of that amount to cover interest and any award of damages for delay, plus $250 to cover costs. Certainly, that would be a very large number here. And I don't entirely agree with retired Judge Richard Schmidt, who, in the *ASARCO* case, said the entire amount of the indebtedness under a plan is the

appropriate amount for a bond.

So, what I will do here is I will accept the Debtor's suggestion of $17.4 million as an appropriate amount of the bond based on the argument made in its pleadings and today. I will tell you I frankly think it's a little on the low side, but I will accept it as reasonable since the Debtor has, I guess, looked into this deeply and decided that would be reasonable.

So, if the Appellants are willing to post a $17.4 million bond, the Court will grant the stay pending appeal.

All right. Well, as I said, I have a hard stop at 12:15, so I'm going to ask --

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. I just had one comment on your last comment.

THE COURT: Okay.

MR. POMERANTZ: My presentation to the Court was not to say that are they should get a stay if they posted the bond. My comment to the Court and argument to the Court is they have not met the standard, but even if they had met the standard, they still need to post a bond. So it was only in the event that you found that they had satisfied their standard. So the Debtor's view is that there should not be any stay, regardless of whether they post a bond or not.

As I indicated in my argument and we indicate in our pleadings, one of our arguments that we did not quantify, and

I suspect we would have quantified if there would have been an evidentiary hearing on the bond, is the effect on the asset sale based upon Mr. Seery's testimony at confirmation.

So we don't think that the Appellants should have a right to a bond. They don't have a right to a bond. And I just wanted to make sure that Your Honor didn't misconstrue my comments differently.

THE COURT: All right. Well, I think I did misconstrue your argument. I mean, my understanding of the case law is the courts of appeal view this as there's a discretionary stay where the Court has the discretion to grant a stay pending appeal. And, you know, it's kind of unfortunate they use that term "discretionary," because there is a strict four-prong test that has to be met. But if the Appellants are willing to put up an appropriate dollar amount as far as a bond, then I don't have discretion. You know, I don't even go through the four-prong analysis.

So, you're telling me you think I got the case law wrong on that?

MR. POMERANTZ: Your Honor, I didn't read the briefing by the Appellants to suggest that. I certainly didn't read -- you know, present that to the Court in our arguments. I don't know if that's the law.

Your Honor, I fully expected that since -- look, a lot of what was presented on the amount of the bond was not evidence,

right? We presented exhibits. The Appellants presented exhibits.

If Your Honor is inclined to view it that way, I guess (a) I would like the opportunity to brief it; and (b) present evidence to Your Honor that the damage is in excess based upon the argument we made on the potential adverse impact to the sale of assets, as Mr. Seery testified on an uncontroverted basis at the confirmation hearing.

MR. RUKAVINA: Well, Your Honor, may I briefly interject?

THE COURT: Briefly.

MR. RUKAVINA: Your Honor, this was our evidentiary hearing, and just like the Court ruled against us based on the evidence on the discretionary stay, Mr. Pomerantz had his chance, the Court has adopted a $17.4 million number, we're going to try our best to get that bond in place ASAP.

If the Court is inclined to consider post-hearing matters, I would ask for a short administrative stay of the effective date of the plan so that we're not prejudiced by that, because otherwise we're kind of in limbo.

MR. CLEMENTE: And Your Honor, if I may, it's Matt Clemente on behalf of the Committee.

THE COURT: Uh-huh.

MR. CLEMENTE: I agree with Mr. Pomerantz's comments. I don't believe -- at least, I didn't appreciate that today

would be an evidentiary hearing over the size of the bond. I understood the pleadings to read that there was a stay that was being requested by the Court [sic], and if the Court should otherwise determine that, based on the law, the stay was required -- which I believe, based on Your Honor's ruling, you did not believe it met the standard -- then there would be a discussion of a bond.

So the Committee would like to offer evidence in connection with the Debtor, if appropriate, to the extent that Your Honor is suggesting that the size of a bond would then result in a stay as a matter of right on behalf of the Appellants, or the potential Appellants.

Thank you, Your Honor.

THE COURT: All right. Well, it was your burden, your -- Appellants -- burden to show -- and, again, I think I'm inclined to allow a little -- well, again, my understanding of the law is I have to grant a stay pending appeal if a sufficient bond is put up. You know, forget about the four prongs if a sufficient bond is put up.

I did not find the $1 million that increased to $3 or $4 million, whatever the number was, was sufficient.

It occurs to me that we really didn't tee up -- we really didn't tee up what was the size of the appropriate amount of bond, now that I think about it. It was all about the discretionary stay, with that just kind of thrown in.

So here is what I will do. I'll deny the motion before me, but it is certainly with leave for us to have a follow-up hearing on a bond amount. Okay? I mean, Mr. Rukavina makes a fair point that he ought to get a small stay, small, a stay between the time we come back -- between today and the time we come back for him to argue about the appropriate bond amount. So -- I'm running into my hard stop -- we'll talk about that hearing date in a moment, but let's talk about what we have set next week. We have the motion to hold Mr. Dondero in contempt related to the alleged violations of the preliminary injunction and TRO. Is there any update from the Fifth Circuit on the *mandamus* request?

MR. TAYLOR: Your Honor, this is Clay Taylor on behalf of Mr. Dondero.

My understanding of that is that briefing was requested by the Fifth Circuit of --

THE COURT: It was due the 16th.

MR. TAYLOR: -- the Debtor -- by the Debtor.

THE COURT: Yes. It was due the 16th.

MR. TAYLOR: You're correct. And that was filed. And it is under consideration by the Fifth Circuit. And beyond that, I mean, of course, I wish I could tell you when they're going to rule, but I can't. So I don't think anybody has any other update other than that.

THE COURT: All right. So we'll go forward Monday at

9:30 unless someone notifies my courtroom deputy over the weekend that the Fifth Circuit has said stop, you can't.

All right. Okay. And then there's -- I don't know if the apparently new counsel who has filed a motion of recusal is on the line, but I'll just tell people I will let you all know by the end of today if I think I need a hearing on that or I think I need to give other parties in interest the opportunity to weigh in on that. But I don't think it's going to stop me from going forward, just based on the very quick summary I got from one of my law clerks this morning. But I'll let you know by the end of the day today if I think I need to set that for hearing or need responsive pleadings.

All right. The last thing before I'm late for my engagement is, Mr. Pomerantz, at some point -- no, this is the next-to-last thing. At some point, you said we have a hearing next week on a preliminary injunction adversary as to the Funds. Is that next week?

MR. POMERANTZ: Your Honor, I may have misspoke. I think it's the 29th.

THE COURT: Okay.

MR. POMERANTZ: I could be corrected if I'm wrong. So, --

THE COURT: Okay. So, with that, I'm going to offer you this. Traci, correct me if I'm wrong: I don't think we have anything set right now on Wednesday of next week,

correct?

THE CLERK: That is correct.

THE COURT: Okay. I will offer you Wednesday to come back on the bond issue. And then, if that's the case, --

THE CLERK: That's --

THE COURT: -- then I'll give a temporary stay through 11:59 next Wednesday on implementing the plan to give the Appellants the opportunity to put on their argument and evidence and for the other parties to put on their argument and evidence about what is an appropriate bond amount. Does that work?

MR. RUKAVINA: Your Honor, very quickly, our agreement in principle with the Debtor was that we'd have a week after a hearing on a temporary stay. I would urge Your Honor to give us that after next Wednesday. Otherwise, we're going to have to go to district court immediately. I don't know if Mr. Pomerantz is agreeable to that.

MR. POMERANTZ: Yes, Your Honor. We're prepared to give a week from the hearing, as our prior agreement was with Mr. Rukavina.

THE COURT: Okay.

MR. POMERANTZ: I would also suggest that, with respect to the hearing next Wednesday, number one, that by the end of the day today -- and it could be late evening -- that parties at least file their witness lists for who would be a

witness at that hearing and that Your Honor set a joint deadline for any briefs, which would primarily be on the legal issue, for 3:00 p.m. Central time on Tuesday, so that Your Honor will have time to review them before the hearing and that we can at least see each other's legal position on whether a stay is appropriate even without meeting the standard in -- if there's a bond posted.

THE COURT: All right. Well, sounds reasonable to me, since we're talking about such a specific narrow issue. Is everyone good with those deadlines?

MR. RUKAVINA: Your Honor, yes, and I know Your Honor has to run. I will not be available for Wednesday, so please excuse me. I'll have someone else handle it.

And I would just ask that in the order denying the discretionary stay, or some order, that the effective date of the plan be pushed out by said week so we have it on paper and clarity. Thank you, Your Honor.

THE COURT: All right. That sounds reasonable, Mr. Pomerantz. Okay.

MR. POMERANTZ: Thank you, Your Honor. I guess the only addition to my -- what I -- on Tuesday, when people file their briefs, they should also file whatever exhibits they would be relying on Wednesday. Today, with the witness, I realize it's a little probably early for people to get all their exhibits, but they should be able to get their witnesses

by today and then their exhibits by 3:00 p.m. Central Tuesday, along with any briefs.

THE COURT: Okay. So that sounds reasonable. By the end of today, the witness and exhibit list, or did we just want to say witness --

MR. POMERANTZ: The witness list by the end of today.

THE COURT: Just the witness list.

MR. POMERANTZ: Just the witness list.

THE COURT: 3:00 p.m. Central time Tuesday for the exhibit list, with exhibits filed, and any briefing. Anyone have any contrary views?

Okay. That will be the ruling, then. And I'll see you Monday, I guess. We're adjourned.

THE CLERK: All rise.

MR. POMERANTZ: Thank you, Your Honor.

MR. RUKAVINA: Thank you.

(Proceedings concluded at 12:20 p.m.)

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CERTIFICATE

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

/s/ Kathy Rehling **03/19/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

EXHIBIT 67

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Thursday, January 14, 2021
	9:30 a.m. Docket
Debtor.	
	- MOTION TO PREPAY LOAN [1590]
	- MOTION TO COMPROMISE CONTROVERSY [1625]
	- MOTION TO ALLOW CLAIMS OF HARBOURVEST [1207]

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

WEBEX APPEARANCES:

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

DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

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

THE COURT: Good morning. Please be seated. All right. We're a little late getting started because we had lots of reading material for the Court today. All right. This is Judge Jernigan, and we have a couple of Highland settings. The HarbourVest matters are the primary thing we have set today, and then we also have a Debtor's motion pursuant to protocols for authority for Highland Multi-Strat to prepay a loan.

All right. Well, let's get a few appearances. First, for the Debtor team, who do we have appearing this morning?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz, John Morris, and Greg Demo here on behalf of the Debtor.

THE COURT: Okay. Thank you.

All right. We have objections on HarbourVest. Who do we have appearing for Mr. Dondero this morning?

MR. WILSON: Your Honor, it's John Wilson, and I'm also joined by Michael Lynn, John Bonds, and Bryan Assink.

THE COURT: Okay. I'm sorry. Could -- the court reporter does yeoman's work in this case. Let me just make sure we got all three of those names. Say again, Mr. Wilson.

MR. WILSON: John Bonds and Michael Lynn and Bryan Assink.

THE COURT: Oh, okay. So, see, I thought I heard somebody Wilson in all of that, which was why I was pressing the issue.

All right. Is Mr. Dondero present on the video for today's hearing?

MR. WILSON: I believe he is, Your Honor.

THE COURT: Mr. Dondero, could you confirm that you are out there? (No response.) Okay. My court reporter says he sees the name out there. Is he in your office?

MR. WILSON: Your Honor, he is appearing remotely from my office. I'm not sure exactly where he's appearing from.

THE COURT: Okay. Well, Mr. Dondero, if you're out there and you're speaking up to confirm you're present, we're not hearing you. Maybe your device is on mute. So please unmute yourself.

(No response.)

THE COURT: All right. I'm going to take some other appearances and you -- you need to try to communicate with your client and let him know I need to confirm he's present. Okay?

All right. Meanwhile, let's go to our other Objectors. CLO Holdco. Who do we have appearing today?

MR. KANE: John Kane; Kane Russell Coleman & Logan; on behalf of CLO Holdco.

THE COURT: All right. Thank you, Mr. Kane.

We had an objection from Dugaboy Investment Trust and Get Good Trust. Who do we have appearing?

MR. DRAPER: Douglas Draper, Your Honor, for -- for Draper.

THE COURT: All right. Thank you, Mr. Draper.

All right. I think those were the only written objections we had. Mr. Pomerantz, do you confirm, we don't have any other objectors for the motions set, correct?

MR. POMERANTZ: Your Honor, there was those three.

THE COURT: I'm sorry. I didn't catch your full sentence.

MR. POMERANTZ: That is correct, Your Honor. There were three objections to the motion.

THE COURT: Okay. Mr. Clemente, you're there for the Creditors' Committee?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. Good morning. Thank you. All right. We have a lot of other folks on the video. I'm not going to go ahead and take a roll call of other lawyers.

MS. WEISGERBER: Your Honor?

THE COURT: Yes?

MS. WEISGERBER: Excuse me, Your Honor. It's Erica Weisgerber from Debevoise on behalf of HarbourVest.

THE COURT: Okay.

MS. WEISGERBER: And I'm joined by Natasha Labovitz and Dan Stroik --

THE COURT: Okay.

MS. WEISGERBER: -- from Debevoise as well.

THE COURT: Thank you. I was neglectful in not getting your appearance, because, of course, you're at the front and center of this motion to compromise, and I did see that you filed a reply brief yesterday afternoon. Okay. Thank you.

All right. Do we have -- do we have Mr. Dondero on the line? I'm going to check again.

(No response.)

THE COURT: Mr. Dondero's counsel, I cannot hear you, so please unmute your device.

MR. WILSON: Your Honor, it appears to me that Mr. Dondero's device was unmuted as soon as you asked if he was available. I sent him a communication a second ago asking if he's having technical difficulties. I have not received a response, so I --

MR. DONDERO: Hello. Can anybody hear me?

THE COURT: Oh.

MR. WILSON: Okay. I hear him.

THE COURT: Mr. Dondero?

MR. DONDERO: Hello?

THE COURT: Is that you?

MR. DONDERO: Yeah, it is. I've been on. I've heard everything since the beginning. It's just we've had technical difficulties. I couldn't use the Highland offices. We've been trying to set up something else.

THE COURT: All right.

MR. DONDERO: But I'm on now, if -- yes.

THE COURT: All right. Very good. Well, I'm glad we've got you.

All right. Well, Mr. Pomerantz, how did you want to proceed this morning?

MR. POMERANTZ: Your Honor, we could take up the HarbourVest motion first, and I will turn it over to John Morris. He and Greg Demo will be handling that. And then after that we can handle the other motion, which is unopposed.

THE COURT: All right. Mr. Morris?

MR. KANE: Your Honor, this is -- sorry. This is John Kane for CLO Holdco. Just very briefly, if I may. And this will affect, I think, the Debtor's case in chief, so I'll expedite things a little bit, I believe.

CLO Holdco has had an opportunity to review the reply briefing, and after doing so has gone back and scrubbed the

HCLOF corporate documents. Based on our analysis of Guernsey law and some of the arguments of counsel in those pleadings and our review of the appropriate documents, I obtained authority from my client, Grant Scott, as Trustee for CLO Holdco, to withdraw the CLO Holdco objection based on the interpretation of the member agreement.

THE COURT: All right. Well, thank you for that, Mr. Kane. I think that -- that eliminates one of the major arguments that we had anticipated this morning. So, thank you for that.

Any other housekeeping matters that maybe someone had that I didn't ask about?

MS. MATSUMURA: Yes, Your Honor. This is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. I just wanted to put on the record, we -- our client had requested that some of its organizational documents be filed under seal. But we have given permission for the parties to present the relevant excerpts, to the extent it's still relevant after Mr. Kane's announcement, in court. And we'd just ask that the underlying documents remain sealed, but we're not going to object if they show them on a PowerPoint or anything like that.

So, to the extent that you had that on your radar, I just wanted to clear that up for the proceedings.

THE COURT: All right. Well, I did sign an order

late last night. I don't know if it's popped up on the docket.

MS. MATSUMURA: Yes, Your Honor. That's what this referred to. That was what -- these are the documents that were being sealed. And so I just wanted to note, if you -- you know, if the Debtor puts up an excerpt of those documents and you're like, wait a minute, didn't I seal those, that we were the party that requested them be under seal and we're fine with them being shown in court, as long as the underlying documents aren't publicly accessible.

THE COURT: Okay. Got you. Thank you.

All right. Any other housekeeping matters?

MR. MORRIS: Yes, Your Honor. This is John Morris from Pachulski Stang for the Debtor. Good morning.

THE COURT: Good morning.

MR. MORRIS: The only other matter that I wanted to raise, and I can do it now or I can do it later, or Your Honor may tell me that it's not appropriate to do at this time, is to schedule the Debtor's motion to hold Mr. Dondero in contempt for violation of the TRO.

THE COURT: All right. Well, let's do that at the conclusion today. And please make sure I do it. I think I was going to address this last Friday, and we went very late and it slipped off my radar screen. But I did see from my courtroom deputy that you all were reaching out to her

yesterday to get this set, and then Mr. Dondero's counsel reached out to her and said, We're going to file an objection to a setting next Wednesday, or I think you had asked for a setting next Tuesday or Wednesday.

MR. MORRIS: I did.

THE COURT: And I don't -- I don't know if that response/objection was ever filed last night. I haven't seen it if it was. So, we'll -- please, make sure I don't forget. We'll take that up at the end of today's matters. All right. Well, --

MR. MORRIS: All right. So, --

MS. WEISGERBER: Your Honor, one last housekeeping item from -- I'm joined this morning by Michael Pugatch of HarbourVest, who will present some testimony this morning. I just want to confirm he's on the line and confirm no objections to him sitting in for the rest of the hearing.

THE COURT: All right. Mr. Pugatch, this is Judge Jernigan. Could you respond? Are you there with us?

MR. PUGATCH: Yes. Good morning, Your Honor. Mike Pugatch from HarbourVest here.

THE COURT: All right. Very good. I think we had you testify once before in the Acis matter, if I'm not mistaken. Maybe. Maybe not. Maybe I saw a video deposition. I can't remember.

All right. So, we're going to let Mr. Pugatch sit in on

this. Anyone want to say anything about that? I consider him a party representative, so I don't -- I don't think anyone could invoke the Rule.

All right. Very good. Well, let's go forward if there are no more housekeeping matters.

MR. MORRIS: Okay.

THE COURT: Mr. Morris?

MR. MORRIS: Thank you. Thank you very much, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Debtor.

It's a rather straightforward motion today. It's a motion under Rule 9019, pursuant to which the Debtor requests the Court's authority and approval to enter into a settlement agreement with HarbourVest that will resolve a number of claims that HarbourVest has filed against the Debtor.

What I -- the way I propose to proceed this morning, Your Honor, is to give what I hope is an informative but relatively brief opening statement. I'll defer to HarbourVest and its counsel as to whether they want to make a presentation in advance of the offer of evidence. Any objecting party, I suppose, should then be given the opportunity to present their case to the Court. Then the Debtor will call Jim Seery, the Debtor's CEO and CRO. We will offer documents into evidence. I would propose then that the objecting parties take the opportunity to ask Mr. Seery any questions they'd like on the

matter.

After the Debtor rests, I think HarbourVest would like to put Mr. Pugatch on the stand to offer some testimony on their behalf. And I think that that will conclude the case. We can finish up with some closing arguments as to what we believe the evidence showed, but that's the way that I'd like to proceed, if that's okay with the Court.

THE COURT: All right. That sounds fine.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. So, as I said, Your Honor, this is a -- this should be a very straightforward motion under Rule 9019. The standard is well-known to the Court. There are four elements to a 9019 motion. The Debtor clearly has the burden of proof on each one. And we easily meet that burden, Your Honor.

The standard, just to be clear, the first part is that we have to establish a probability of success, with due consideration for uncertainty of law and fact. The second one is the complexity, likely duration, expense and inconvenience of the litigation. The third part of the test is the paramount interest of creditors. And the fourth part of the test is whether or not the proposed settlement was reached after arm's-length negotiations.

The Debtor believes that it easily meets this standard, and frankly, is a little bit frustrated that it's being forced

to incur the expense by Mr. Dondero in going through this process.

A plain reading, a fair reading of the economics here relative to the claim shows that this is a very reasonable settlement. I don't need to go beyond that, Your Honor. I don't even need to use the word reasonable. It surely meets the lowest standard.

We've prepared a couple of demonstrative exhibits, Your Honor. I'm going to use them with Mr. Seery. But I'd like to just put one up on the screen now, if I may.

Ms. Canty, can you please put up Demonstrative Exhibit #3?

Demonstrative Exhibit #3 is an outline of the economics of the settlement. It includes the various pieces, the components that the parties have agreed to. And it shows, at least from the Debtor's perspective, just what HarbourVest is being given here.

Up on the screen is a demonstrative exhibit. It has citations to the evidence that will be admitted by the Court. The first line shows that HarbourVest will receive a $45 million allowed general unsecured nonpriority claim. And that -- that can be found at Debtor's Exhibit EE, Exhibit 1, at Page 2.

That claim is discounted by the expected recovery that general unsecured creditors are supposed to get. As of November, in the liquidation analysis that was part of the

disclosure statement -- that's the citation in the footnote -- the Debtor believed that unsecured creditors were estimated to recover approximately eighty-seven and a half cents on the dollar. And so we just did the arithmetic there to get to the net economic value of the proposed general unsecured claim.

And from that, we reduced $22-1/2 million because that is the net asset value of HarbourVest's interest in HCLOF, which, pursuant to the settlement agreement, it will transfer back to the Debtor, so that the net economic value is approximately $16.8 million.

You will hear testimony from Mr. Seery that this number is, in fact, overstated, and it's overstated because, since the time the disclosure statement was filed in November, a number of events have occurred that will -- that have caused the estimated recovery percentage to be reduced from approximately 87-1/2 percent to something lower than that. We don't have the exact number, Your Honor, but Mr. Seery will -- and the evidence will show that there's been more expenses, that there's been some resolution of certain claims. There's been some positive issues, too. But that number is probably in the 70s somewhere.

And in any event, I think the point here is, Your Honor, HarbourVest invested $80 million in HCLOF, which was going to participate in the investment in CLOs. They filed a claim for $300 million, through treble damages and other claims. But

the net economic impact of this is going to be somewhere probably in between $12 and $14 million. I'll let Mr. Seery give more precision to that. And it represents less than -- a less than five percent recovery on the total claim.

And we think it's important for the Court to keep that in mind. What are the economics here? Are we overpaying? Is this an unreasonable settlement? And I think the evidence will show that the Debtor is not, but that this settlement that you see before you was the product of arm's length, and I'm going to go in reverse order of the four-part test under 9019.

So, the last part is whether or not the settlement, the proposed settlement was the product of arm's-length negotiation. You'll hear lots of evidence that this settlement that's up on the screen right now very much was the product of arm's-length negotiation.

The third part of the test, Your Honor, is whether it meets the paramount interest of creditors. You know, regrettably, Mr. Dondero is the only purported creditor who is objecting here. He may have done so through different vehicles, but every objecting party here is a debtor [sic] owned and controlled by Mr. Dondero. No other creditor -- not the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty -- nobody is objecting to this settlement except for Mr. Dondero. And we believe that that highlights the Debtor's

ability to meet the third prong of the test, and that is these are -- this settlement is in the paramount interest of creditors.

Again, going in reverse, the second part of the test is the complexity, duration, and expense of litigation. There will be no disputed evidence that we meet -- the Debtor easily meets this prong of the test. The evidence is going to show that HarbourVest's claim is based on fraud, fraud in the inducement, fraudulent statements and omissions, the kind of case, Your Honor, that I'm sure you're familiar with that is incredibly fact-intensive, that will be incredibly difficult to navigate through. It will be prolonged, it will be expensive, because you're necessarily relying on he said/she said, basically. And so we're going to have to get testimony from every person that spoke in connection with the events leading up to the transaction. So we think the second prong will be easily met, Your Honor.

And then the last prong -- the first prong, if you will -- is the likelihood of success on the merits. We think that the settlement, the economic recovery that's up on the screen here, which ultimately will be less than five percent of the claimed amount, in and of itself shows that the settlement is consistent with the Debtor's perception of its likely success on the merits. I'm certain that HarbourVest disagrees, but that's okay, we're here today and that's the Debtor's view,

and the Court is here to assess the Debtor's business judgment and whether the Debtor has properly analyzed the issues and gone through the process. And the evidence will show conclusively that it will. That it has.

Mr. Seery will testify at some length as to the risks that he saw. I think that you'll hear counsel for Mr. Dondero ask both Mr. Seery and Mr. Pugatch a number of questions designed to elicit testimony about this defense or that defense. And it's a little -- it's a little ironic, Your Honor, because, really, every defense that they're going to try to suggest to the Court was a valid defense is a defense that the Debtor considered. In fact, it's, you know, it's a little spooky, how they've -- how they've been able to identify kind of the arguments that the Debtor had already considered in the prosecution of their objections here.

But be that as it may, the evidence will conclusively show that the Debtor acted consistent with its fiduciary duties, acted in the best interests of the Debtor's estate, acted completely appropriately here in getting yet another very solid achievement for the Debtor, leaving very few claims that are disputed at this point, all but one of which I believe are in the hands of Mr. Dondero.

So, that's what we think that the evidence will show.

I do want to express my appreciation to Mr. Kane for reflecting on the arguments that we made with respect to the

ability of the Debtor to engage in the transfer or the acquisition of the asset from HarbourVest. I would -- I would respectfully request that we just enter into a short stipulation on the record reflecting that the Debtor's acquisition of HarbourVest's interests in HCLOF is compliant with all of the applicable agreements between the parties.

And with that, Your Honor, I look forward to putting Mr. Seery on the stand and presenting the Debtor's case.

THE COURT: All right. Other opening statements?

OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

MR. KANE: Yes, Your Honor. Sorry. John Kane on behalf of CLO Holdco.

In response to Mr. Morris, I'm not going to enter into a stipulation on behalf of my client, but the Debtor is compliant with all aspects of the contract. We withdrew our objection, and we believe that's sufficient.

THE COURT: All right. Well, I'm content with that.

Other opening statements?

OPENING STATEMENT ON BEHALF OF HARBOURVEST

MS. WEISGERBER: Your Honor, Erica Weisgerber on behalf of HarbourVest.

HarbourVest joins in Mr. Morris's comments in support of the settlement, and we believe that the question of whether the settlement between HarbourVest and the Debtor satisfies the Rule 9019 standard is not even a close one.

Some Objectors have made arguments about the merits of HarbourVest's claims, which is why we're here. As Your Honor will hear this morning, HarbourVest has meaningful and meritorious claims against Highland, but made the business decision to avoid the time, expense, and inherent risk of litigation in the interest of preserving value, both for itself and for the estate.

Today, Michael Pugatch, a managing director of HarbourVest, will testify before the Court. He'll explain that HarbourVest claims against Highland arise out of certain misrepresentations and omissions by Highland to HarbourVest in connection with HarbourVest's purchase of an interest in HCLOF, one of Highland's managed funds. Those misrepresentations and omissions, as Your Honor will hear, relate to Highland's litigation with its former employee, Joshua Terry, and transfers that were conducted in 2017 to strip Acis of value and prevent Mr. Terry from collecting on an $8 million judgment.

Mr. Pugatch will further explain that HarbourVest would not have invested in HCLOF had it known the underlying facts about those Acis transfers.

Mr. Pugatch will also testify that not only did HarbourVest not know about those transfers, it learned about those transfers when it was accused of orchestrating the transfers itself in the Acis bankruptcy. Your Honor will hear

that the Acis trustee sought extensive discovery from HarbourVest after numerous accusations that HarbourVest was behind the transfers.

Mr. Pugatch will also testify that Highland charged legal fees for itself and its affiliates to HCLOF, essentially forcing HCLOF to fund the litigation involving the Acis bankruptcy and Mr. Terry.

In total, HarbourVest's claims for damages are over a hundred million dollars in investment-related losses, lost profits, legal fees inappropriately charged to HCLOF, its own legal fees. And that's before interest or trebling damages.

But HarbourVest stands ready to litigate its claims, but following hard-fought and extensive negotiations with the Debtors, the parties reached the settlement that's now before the Court. Mr. Pugatch's testimony regarding the strong factual bases for HarbourVest's claims against Highland and its recoverable damages will further underscore the risks that the Debtors faced if they chose to litigate these claims, and why this settlement is fair, equitable, and in the best interest of the estate.

THE COURT: All right. Thank you, Counsel.

Other opening statements?

OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: Your Honor, this is Douglas Draper on behalf of one of the Objectors. I'd like to just make a few

comments with respect to what I've heard and what the Court is going to hear.

The first issue I'd like to address is the comment by counsel for the Debtor that no other party has objected. The 9019 motion is one of the issues that this Court has to rule on, whether or not there was an objection or not. So the fact that this may be -- bankruptcy is not a popularity contest and not an issue of who votes for what and doesn't vote. This, along with the 1129(a) tests, are clearly within your province, and you need to listen carefully because you'll have to make your own independent analysis whether my objection is correct or incorrect.

Two other points I'd like to make that I think are very salient. Number one is, if you look at the Debtor's disclosure statement, it basically took the position that the HarbourVest claim is of little or no value. And lo and behold, thirty days later, there's a settlement that brings about a significant recovery to HarbourVest. The timing is interesting, and I think the Court needs to pay careful attention to what transpired between the two dates.

And then the last point I'd like to make is, as you listen to the evidence, and what I learned abundantly clear from hearing the depositions, is that the claim of HarbourVest, if there is a claim at all, is probably one hundred percent -- should be subordinated in that it appears to arise out of the

purchase or sale of a security. And, again, I would ask the Court to listen carefully to this because that's what it appears to be and that's what the evidence is going to show to the Court.

THE COURT: All right. Mr. Draper, let me clarify something I'm not sure if I heard you say or not. Were you saying that the Court still needs to drill down on the issue of whether the Debtor can acquire HarbourVest's interest in HCLOF?

MR. DRAPER: No.

THE COURT: Okay. I was confused whether you were saying I needed to take an independent look at that, now that the objection has been withdrawn of Holdco. You are not pressing that issue?

MR. DRAPER: No, I am not. Basically, I think it's the fairness of the settlement. I think the transferability of the interest is separate and apart from the fairness of the settlement itself. I think the fairness -- the transferability was a contractual issue between two parties that the Court does not have to drill down on.

THE COURT: All right. I have another question for you. I want to clarify your client's standing. Tell me -- I'm looking through a chart I printed out a while back. I guess Dugaboy Investment Trust filed a couple of proofs of claim; is that right?

MR. DRAPER: Yes.

THE COURT: Okay. What --

MR. DRAPER: And objections are pending.

THE COURT: Pardon?

MR. DRAPER: Objections to those claims are pending before the Court, Your Honor, --

THE COURT: Okay.

MR. DRAPER: -- and have not been litigated.

THE COURT: And what about Get Good Trust?

MR. DRAPER: Get Good Trust has a proof of claim also that objections are pending to. Pending.

THE COURT: Okay. I don't want to get too sidetracked here, but I know standing was -- was mentioned as a legal argument today. What is the basis for those proofs of claim?

MR. DRAPER: The first one is, with respect to the proof of claim for Dugaboy, there is an investment that Dugaboy made that was then funneled, we believe, up to the Debtor. And the -- the loan that exists, we believe is a Debtor loan, as opposed to a loan to the entity that we made the loans to.

And, again, it's a matter that the Court is going to hear. The claim may or may not be allowed. It has not been disallowed yet.

The second part to the Dugaboy ownership is we own an

interest in the Debtor. And so we are, in fact, a party in interest.

THE COURT: Okay.

MR. DRAPER: It may be a small interest, but it is an interest.

THE COURT: It has a limited partnership interest in the Debtor?

MR. DRAPER: Yes.

THE COURT: Is that correct?

MR. DRAPER: Yes.

THE COURT: Okay. Well, I'll move forward. Thank you.

Does that cover -- any other opening statements? I think that covered everyone who was -- who filed some sort of pleading today. No.

MR. WILSON: Your Honor, John Wilson on behalf of --

THE COURT: I'm sorry. I'm sorry.

MR. WILSON: -- Mr. Dondero.

THE COURT: I missed Mr. Dondero's counsel. I knew we had visited at some point this morning. I just got confused there. Go ahead, Mr. Wilson.

MR. WILSON: No problem, Your Honor. I was just going to say that we will reserve our comments until after the conclusion of the testimony.

THE COURT: All right. Very well.

Mr. Morris, you may call your first witness.

MR. MORRIS: Thank you, Your Honor. Before I do, just two very, very quick points.

THE COURT: Okay.

MR. MORRIS: To be clear, Dugaboy's interest in the Debtor is 0.1866 percent. Less than two-tenths of one percent.

Secondly, the argument that Mr. Draper just made with respect to subordination is one that appears in nobody's papers. And, in fact, not only doesn't it appear in anybody's papers, but Mr. Dondero, I believe, specifically took issue with the fact that a portion of the consideration that HarbourVest would receive would be on a subordinated basis, and he would -- and I think he took the position there is no basis to give them a subordinated claim.

So, I just wanted to point those items out to the Court, not that I think either one makes a large difference today, but I do want to deal with the facts.

THE COURT: Thank you.

MR. MORRIS: The Debtor would call -- you're welcome, Your Honor. The Debtor calls Mr. James Seery.

THE COURT: All right. Mr. Seery, welcome back to virtual court. If you could say, "Testing, one, two" so I can see you and swear you in.

MR. SEERY: Testing, one, two.

THE COURT: All right. I heard you but I'm not yet seeing your video. Is your video turned on?

MR. SEERY: Video is on. Yes, Your Honor.

THE COURT: Okay. I see you now. Please raise your right hand.

JAMES SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: Thank you. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery. Can you hear me?

A I can. Thank you, Mr. Morris.

Q Okay. Let's just cut to the chase here. Are you familiar with HarbourVest's claims filed against the Debtor?

A I am, yes.

Q And did you personally review them?

A I did, yes.

Q Do you recall that over the summer the Debtor objected to HarbourVest's claim?

A Yes, we did.

Q Why -- can you explain to the judge why Harbour -- why the Debtor objected to HarbourVest's claim last summer?

A Sure. The HarbourVest claims, I believe there are about six of them, initially were filed, and they were -- they were relatively vague in terms of what the specifics of the claims

were.

So, we saw the claims but didn't, frankly, pay a lot of attention to the underlying transaction that was referred to in the proofs of claim and the losses that HarbourVest had claimed to suffer -- to suffer with respect to their purchase of securities related to HCLOF and the damages caused by the Acis case. So we filed a pretty pro forma objection. I believe it was a simply stated objection that we didn't have any record that there was anything in the Debtor's books and records that they had a valid claim for any amount against the Debtor.

Q Are you aware that HarbourVest subsequently filed a response to the Debtor's objection to their claims?

A Yes. Yes, I am aware.

Q And did you familiarize yourself with that particular response?

A I did indeed. It was a pretty extensive response, really developing the full panoply of their claims, which included claims for expenses relating to the Acis case, which HarbourVest viewed as being improperly charged to HCLOF by its manager, which is effectively Highland. Those expenses, HarbourVest took the view, were excessive, had nothing to do with the investment, and were simply a pursuit of a personal vendetta against Mr. Terry and his interests by Mr. Dondero, and using HCLOF's money to actually pursue those interests.

In addition, and this was the first time we saw that, HarbourVest brought forth its claims that it was entitled to effectively rescind the transaction. And I say rescind the transaction: In security parlance, they claim that they were induced by fraud, I think as most are -- to enter into the transaction.

As most are aware, the liability limitations in the OMs and the exculpation in the documents are pretty broad, and HarbourVest's position was that they weren't going to be subject to those limitations because the actual transaction that they entered into was a fraud on them, designed by Mr. Dondero, Mr. Ellington, and the Highland team.

Q All right. Let's talk about your understanding, the Debtor's understanding of the factual background to HarbourVest's claim. What is your understanding of the investment that HarbourVest made?

A Well, HarbourVest made an investment in the Highland CLO business. The Highland CLO business was -- was Acis. And effectively, the business had been separated, but in name only. Acis was just a shell, with a few partners -- obviously, Mr. Terry as well -- but it was all Highland personnel doing all the work.

And what they were trying to do with Acis was, in essence, resuscitate a business that had been in a bit of a decline from its pre-crisis heyday.

They were looking to take additional outside capital. They would -- they would pay down or take money out of the transaction, Highland would, or ultimately Mr. Dondero, and they would -- they would seek to invest in Acis CLOs, Highland's 1.0 CLOs. And then with respect to the Acis CLOs, and potentially new CLOs, but with the Acis CLOs, they'd seek to reset those and capture what they thought would be an opportunity in the market to -- to really use the assets that were there, not have to gather assets in the warehouse but be able to use those assets to reset them to market prices for the liabilities and then make money on the equity.

Q Do you have an understanding --

A Then --

Q I'm sorry. Go ahead.

A Why don't I continue? So, the transaction, they found HarbourVest as a potential investor, and the basis of the transaction was that they would make an investment into Acis.

Shortly before the transaction, and while they were doing diligence, Mr. Terry received his arbitration award. I believe that was in October of 2017. The transaction with HarbourVest closed in mid- to late November of 2017. But Mr. Terry was not an integral part. Indeed, he wasn't going to be a key man. He had been long gone from Highland by that time.

What the -- I think you asked me originally what the basis of their claim was. The transaction went forward, and the

basis of their claim is that they really were never -- nothing was disclosed to them about the nature of the dispute with Mr. Terry other than in the highest-level terms; the animosity with respect to which that dispute was held by Highland and potentially Mr. Terry; and really, how those costs would be borne and risks be borne by the investment that they were making.

That was, in essence, the transaction and the high-level view of their claim.

Q Okay. Just a few very specific facts. Do you have an understanding as to how much HarbourVest invested and what they got in exchange for that investment?

A Yeah. HarbourVest invested in a couple tranches, and I forget the exact dates, but approximately $75 million originally, and then they added another five. Some distributions were made in the first half of 2018, putting their net investment in the mid-seventies on the investment, which now is worth about 22-1/2 million bucks.

Q And what percentage interest in HCLOF did HarbourVest acquire, to the best of your knowledge?

A They have 49.98 percent of HCLOF. HCLOF, just to refresh -- the Court is, I think, well aware of this, but to refresh, is a Guernsey entity. Not -- not atypical for structures of this type to use offshore jurisdictions and sell the securities under -- at least to U.S. -- can't sell them to

U.S. investors unless they qualify, and these are sold under Reg S to -- to investors that otherwise qualify. And HarbourVest was investing in that transaction through the Guernsey structure.

Q And do you have an understanding as to who owned the 50-plus percent of HCLOF that HarbourVest was not going to acquire?

A Yeah. There's -- you can tell by the name. HCLOF is Highland CLO Funding. This is a Highland vehicle. So Highland owned and controlled the vehicle. The DAF, which is -- which is Dondero-controlled trusts, have the -- 49 percent. Highland has, I believe, around .63-65 percent directly. And then Highland employees at the time who were involved in the business owned another small percentage.

So the majority was going to be controlled by Highland through its control of DAF and its control of the employees that worked for it. HarbourVest would be a minority investor.

Q Okay. And I believe you testified that the investment was made in mid-November; is that right?

A That's correct. I think it was the 15th, may have been the 17th of November.

Q And do you recall when in October the Terry arbitration award was rendered?

A It was about a month before. I think it was right around the 20th, the 17th to the 20th. I may be slightly wrong on

each of those dates.

Q Okay. What is your understanding as to what happened after the issuance of the award that is the basis or at least one of the bases for HarbourVest's claim?

A I don't think there's -- I don't think there's any dispute. And there certainly are judicial findings. Dondero and Highland went about stripping Acis of all of its assets. So, remember that Acis is not a separate standalone company, in any event. It's controlled and dominated completely by Highland at the time. But it did have contracts. And those contracts had value.

So the first idea was to strip out the management contract and put it into a separate vehicle, which we called HCF Advisor, which Highland still owns. The second piece was to strip out some valuable assets, the risk retention piece, which was a loan that in essence was equity that Highland had put into Acis but structured as a loan, as many of the transactions we'll see down the road are, in order to deal with some -- avoid taxes in any way possible. And that structure, that value moved value out of Acis for the express purpose of trying to run, in essence, the Highland business back in Highland.

Remember, as I said, Acis is just a Highland business moved to a separate shell. When Mr. Terry got his arbitration award against Acis and was seeking to enforce it, it was

pretty straightforward, let's take all the assets -- Dondero scheme -- let's take all the assets and move them back into Highland so Terry can't get anything.

Q And how does that scheme relate to the HarbourVest claim, to the best of your knowledge?

A Well, HarbourVest -- HarbourVest's position is that they invested in Acis and -- and whether Acis was called Acis or called Highland, it doesn't really matter; there were valuable assets in the -- in the entity that they were going to be investing in through the equity in these CLOs and some of the debt securities in those CLOs.

And then the stripping out and the fraudulent conveyances out of Acis caused them damages because that's what left the damage to Mr. Terry.

The quick math on Acis, by the way, is Acis has probably lost, total damages, 175 million bucks. And that's pretty easy. DAF lost 50. HarbourVest lost 50. Fifteen million of fees charged to HCLOF. Another five million of fees, at least, incurred by Mr. Terry. Ten million that went to Mr. Terry, 15 to Highland fees, another five, plus Mr. Terry's settlement in this case, over eight million bucks.

So HarbourVest's position, which, on a factual basis, you know, is problematic for the estate, is, wait a second, we invested in this vehicle with Highland. That was supposed to invest in Highland CLOs. They were called Acis, but they were

Highland CLOs. And then you went about causing tremendous damage to that vehicle that we ultimately were investing in, and then charge us for the pleasure.

Q You used the phrase earlier "OM," I believe.

A Offering memorandum.

Q Offering memorandum? Can you just explain to the Court your understanding of what an offering memorandum is?

A Typically, under U.S. law, and foreign jurisdictions have similar laws, you have to have a document that explains the securities that you're selling. And it goes into extreme detail about the securities and the risks related to those securities.

And the idea is not to have a document that tells you whether it's a good investment or a bad investment, but it's a document that discloses to the potential investor all of the risks with respect to that security or related to the investment over the duration of the security. It doesn't predict the future, but it's supposed to make sure that it gives you a very clean view of the past and a very clean view of what the facts from the past are and how they would implicate the future of the investment.

Q And in the course of its diligence, did the Debtor have an opportunity to review the offering memorandum in the context of the claims that were being asserted by HarbourVest?

A Oh, absolutely. It was originally effectively -- it's an

HCLOF offering memorandum. But as I said, HCLOF was managed and controlled by Highland, and Highland originally prepared it. And then, of course, in connection with -- with this dispute and these claims, we reviewed it, both myself and my legal team.

Q All right.

MR. MORRIS: Your Honor, the offering memorandum is on the Debtor's exhibit list, and I think this is an appropriate time to move into evidence Debtor's Exhibits A through EE, all of which appear at Docket No. 1732.

THE COURT: 1732?

MR. MORRIS: It's the Debtor's Second Amended Witness and Exhibit List.

THE COURT: All right. Any objection to admission of A through EE?

MR. DRAPER: Douglas Draper. No objection, Your Honor.

THE COURT: All right. Mr. --

MR. MORRIS: May I proceed?

THE COURT: Yeah. Mr. Wilson, did you want to confirm no objection?

(Echoing.)

THE COURT: All right. Hearing no objection, Debtor's A through EE are admitted.

(Debtor's Exhibits A through EE are received into

evidence.)

THE COURT: Go ahead, Mr. Morris.

MR. MORRIS: Thank you, Your Honor. The offering memorandum itself is one of the documents that we filed under seal, and we did so at the request of counsel to HCLOF. But HCLOF has consented to our sharing up on the screen certain very limited provisions of the document, without waiving the request that the agreement otherwise be maintained under seal.

THE COURT: All right.

MR. MORRIS: So may I proceed on that basis, Your Honor?

THE COURT: You may. Uh-huh.

MR. MORRIS: Okay. Ms. Canty, can you please put up on the screen Demonstrative Exhibit #1? Okay. Can we just -- is there a way to just expand that just a bit, Ms. Canty? Thank you very much. And if we could just scroll it up? Thank you very much. Perfect.

Okay. So, Your Honor, this, as the footnote says, is an excerpt from the offering memorandum that can be found at Debtor's Exhibit AA. Double A. And this particular portion of the offering memorandum is at Page 35.

THE COURT: Okay.

BY MR. MORRIS:

Q Mr. Seery, have you seen this portion of the offering memorandum before?

A Yes, I have. But before I continue, I just -- I should have checked. Are you able to hear me clearly? Am I speaking too quickly or am I cutting out? I just want to make sure. I'm using a different set of audio today.

THE COURT: All right.

MR. MORRIS: That's fine.

THE COURT: I hear you very well.

MR. MORRIS: Yeah.

THE COURT: So I think we're good right now. Thank you.

THE WITNESS: Yeah. Thank you, Your Honor. I was just checking.

THE COURT: Okay.

THE WITNESS: In response to your question, Mr. Morris, yes, I have seen this before.

BY MR. MORRIS:

Q Okay. And can you -- did you form a view in doing the due diligence as to the adequacy of this disclosure?

A Yes, I did.

Q Can you share your -- or share with Judge Jernigan the Debtor's view as to the adequacy of this disclosure concerning the litigation between Highland and Acis?

A With respect to the litigation between Highland and Acis, or, really, between Acis, Highland, and Highland's principals and Acis's principal, totally inadequate. The disclosure here

is very high-level. And if there were no other litigation going on, it might serve to suffice. It basically says, In our business, because we invest in distressed loans, there's a lot of litigation around distressed investments, and that's what we have. And then it says, We've talked with the investor about other things and we're -- we think that's enough.

Q Is there anything in this portion or anywhere in the offering memorandum that you're aware of that disclosed to HarbourVest that in the weeks leading up to the investment Highland was engaged in the fraudulent transfer of assets away from Acis?

A No. And I apologize, because I think it's -- I've conflated two provisions. This one only deals with the very high-level nature of the business. It doesn't give any indication that there's any material litigation going on elsewhere with respect to Acis.

I believe there's another provision that says, We -- we have talked to -- oh, here -- I'm sorry. It is here. Shareholders have had an opportunity to discuss with Highland to their satisfaction all litigation matters against Highland and its affiliates unrelated to its distressed business.

That, in my opinion, is wholly inadequate.

Q Okay.

MR. MORRIS: And let's put up -- actually, let's just

move on.
BY MR. MORRIS:
Q Let's go to the settlement itself.
MR. MORRIS: Can we put back up Demonstrative Exhibit #3?
BY MR. MORRIS:
Q Mr. Seery, can you see that?
A Yes, I can.
Q Does this generally describe the net economic recovery of the HarbourVest settlement based on estimated recoveries for general unsecured creditors as of November 2020?
A As of November 2020, it does. And you alluded to this in your opening, but to be clear, the numbers have shifted. Costs have increased. The -- so the -- effectively, the numerator, in terms of distributable value that we estimate, is lower. And settlements, the denominator, have also increased. So the claims against the estate that have been recognized have increased. And that, that probably takes it down closer, in our view, to about seventy cents distribution, a number closer to nine to ten million, maybe a little bit less.
However, there's also some additional value that we -- we believe we will recover directly. There are north of $150 million of intercompany notes owed by Dondero entities to Highland. A number of those notes are demand notes, and we've

already made demand. We'll be initiating actions next week. So those are -- those value, we believe, we'll recover directly from Mr. Dondero and from related entities.

To the extent those related entities don't have value, we feel very strongly about our ability to pierce the veil and reach in to Mr. Dondero. And then his assets, either his personal assets or the assets that he claims are in trusts.

In addition, there are a significant amount of notes that were extended in two -- I believe around 2017, for no consideration. Those notes were demand notes, I believe, and then extended it 30 years. So they have 2047 maturities. Those were probably going to have to be subject to fraudulent conveyance type actions or -- or some sort of sale at a very discounted value because third parties wouldn't want long-dated notes with Mr. Dondero as the counterparty for very much money.

Those -- they defaulted on some of those parties, so we effectively turned them into demand notes. We've accelerated, and we'll be bringing actions against those entities next week as well.

So I think (garbled) have come up, so I apologize. One way of saying I think the sixteen and a half is a bit high right now, based upon what we know, but the value is going to be higher than our estimate a couple of weeks ago because we do believe we'll be able to recover on the notes.

One additional caveat, just to be fully transparent here. This summary with the 16.8 doesn't include the subordinated piece of this -- of this claim and our resolution. That -- recovery of that piece will be dependent upon the success of litigations.

In order for the subordinated piece to get paid, all general unsecured claims in Class -- Classes 7 and 8 will have to be paid in full. And then -- and then the subordinated class in Class 9, which we believe UBS will have a piece of, and HarbourVest will have a piece of by this settlement, those will be able to recover, and those will be based upon other claims of action against -- primarily against related parties.

Q And then that last point, is that what's reflected in Footnote 3 on this page?

A That's correct, yes.

Q Okay. And just for the record, there's a reduction in value of $22-1/2 million. Do you see that?

A Yes.

Q And can you just explain to the Court what that is and how that value was arrived at?

A Yes. I may be getting slightly ahead of you, Mr. Morris. But to give the Court a reflection of the transaction -- and we can go into the details in a moment -- ultimately, the transaction we structured we think is very fair both economically to the Debtor, but there -- there is some

complexity to it to satisfy some of HarbourVest's concerns that they be able to effectively rescind the transaction, at least from an optical perspective. Value was important, but optics were as well. The twenty-two and a half is the current -- actually, the November value of HCL -- the HarbourVest interests in HCLOF. And that's based upon Highland's evaluation of those interests.

So we do believe that that is a fair value as of that date. It has not gone done. It hasn't gone up explosively, either, but it hasn't gone down. We think that's good, real value. That value is in the Acis CLOs, the equity in those CLOs, which is 2 through 6, that we -- we will be working with the HCLOF folks to get Mr. Terry to monetize those assets and those longer-dated CLOs.

In addition, I think it's 85 percent of the equity in Acis 7 -- Acis 7 is managed by Highland -- that is also beyond its reinvestment period. And in talking to the directors -- and they're new directors, and I'll get to that in a minute, for HCLOF -- they'll seek to push Highland, which is the reorganized Highland, to monetize that asset, with due regard to fair value.

In addition, Harbour -- HCLOF owned a significant amount of the preferred or equity pieces, if you will, in the Highland CLO, 1.0 CLOs. As we've talked about, those are not really CLOs. Those are effectively closed-end funds with

illiquid assets, primarily illiquid assets in them. We've had some dispute in front of the Court about selling the liquid assets in them, which we can go into it another time. Those are being liquidated in the market at fair value.

But HCLOF also is a significant holder of those preferred shares, and those directors would -- have indicated to me that they would like to see those interests also monetized.

Q All right. Let's shift gears for a moment to talk about the diligence that the Debtor did before entering into this agreement. Can you just describe for the Court generally the diligence that was undertaken at your direction?

A Well, when we first received the reply to our objection, we dug into that reply and the specifics in it very aggressively. So we reviewed all of the underlying documents related to the original transaction. We discussed with counsel the legal basis for the HarbourVest claims. We interviewed our own HCMLP employees who were involved in the transaction and tested their recollection, specifically around who dealt with HarbourVest, who had the discussions with HarbourVest, what was disclosed to HarbourVest with respect to the Terry dispute and the Acis litigation.

We also had done, as I think the Court is well aware from prior 9019 testimony, extensive work around the transfers and the issues related to Acis. So we were familiar with their impact on HCLOF.

We also did extensive work valuing the remaining HCLOF interests to get a good feel of not only how much HarbourVest originally invested, but how much they actually lost in this transaction. And as I said, their original investment was around, in total, in two tranches, about $80 million, of which they got about $5 million back, and they've lost $22 million. So it -- I mean, remaining with $22 million. So they've lost, you know, in excess of $50 million.

Q Do you recall whether the Debtor reviewed and analyzed all of the documents that were cited in HarbourVest's response to the Debtor's objection to the HarbourVest proofs of claim?

A Yeah. I think -- I forget, to be honest, which -- exactly what documents were in there. But we went through their objection with a fine-toothed comb, not only with respect to the issues related to the Acis case, but also their references to Guernsey law, other U.S. law, any of the documents between the parties. And obviously, as I mentioned before, the offering memorandum.

MR. MORRIS: Your Honor, I would just note for the record that Debtor's Exhibits I through X are all of the documents that are cited in HarbourVest's response to the Debtor's objection to the HarbourVest proofs of claim, and those are the documents that Mr. Seery just referred to.

THE COURT: All right.

MR. MORRIS: Just, they're in evidence now, and I

just wanted the Court to understand why they're in evidence.

THE COURT: Okay. Thank you.

MR. MORRIS: You're welcome.

BY MR. MORRIS:

Q Let's talk about the Debtor and whether or not it had or has any viable defenses. Did the Debtor form any views as to whether or not it had any defenses to the HarbourVest claims?

A Yes, we did.

Q Can you describe for the Court the defenses that were reviewed and analyzed by the Debtor?

A Yeah. I think we -- we had very significant defenses. So, first and foremost, with respect to the original proof of claim, as I mentioned earlier, it alluded to the expenses and the overcharge. And I think with respect to the 15 million of fees that were charged to HCLOF by Highland, we didn't have a lot of defenses to that claim.

It's pretty clear, by any fair view of the Acis case, that HCLOF, as the investor in the Acis CLOs and the Highland CLOs, had no real responsibility for fighting with Acis and Josh Terry and shouldn't have been charged those fees. I don't -- I don't think there's a legitimate investor that would actually think that that was an appropriate amount to be charged to a fund.

However, the claim was not as broad -- the proof of claim was not as fulsome in terms of discussing and only vaguely

referred to other damages. So we did -- we did, as a threshold matter, think about whether we could argue that it was time-barred because they had not met their obligations to fully disclose under the proof of claim.

Secondly, we considered the defenses to the overall claim of fraudulent inducement. Our perspective was that if we could stop the claim of fraudulent inducement, the damages would likely be limited to the 15 and maybe some -- some other damages. With respect to the 15, again, the problem that we had when we got past -- past motions for summary judgment is the factual predicate for our defense was going to be that we divulged these things to HarbourVest and that they did not reasonably -- it was -- reasonably rely on some failure to divulge because they're a sophisticated investor.

The problem with that defense is that our witnesses, which really would have primarily been Mr. Dondero and Mr. Ellington, and one other employee who runs the CLO business, Mr. Covitz, would not be pretty good. They've been -- two of them have been in front of this Court and they're not viewed favorably and their testimony would be challenged and potentially suspect.

So that gave us a real focus on trying to make sure that we could, if we had to litigate, that we would litigate around the fraudulent inducement.

As I said, reasonable reliance, what was disclosed, lack

of digging into the public record, because you don't have to go far on Google to find "fraud" within two words of "Highland," and the tremendous, you know, litigious nature of Highland. You know, even at that point, when this investment was made, aside from Mr. Terry's arbitration, which by that point, at least by the time (inaudible) was public, there was, you know, significant public disclosure around the Credit Strat and the litigation, the Crusader litigation, the UBS litigation, the, gosh knows, the Daugherty litigation.

So our defense was going to be that you should have figured this out, you're a sophisticated investor, and you should have been able to figure out that there was significant risk that, with respect to Mr. Terry, that Mr. Dondero would not stop litigating and that those costs would put significant risk on the investment.

The problem with that, as I mentioned earlier, is that the OM is wholly deficient. If you have a typical risk factor in the offering memorandum, you would have disclosed that there was a litigation with Mr. Terry, a former partner in the business, and that the Debtor had no intention of settling it. There was no intention of settling. That litigation would go on. It could go on for years and it could result in bankruptcy or attachments and other risks to the business, and that the investor should be fully aware that the Offeror does not intend to be involved in any -- or the manager, in any

settlement with Mr. Terry, and the fact it undermined the investment. That wasn't there.

But that was our preliminary focus, to try to stop fraud in the inducement. And then we -- we had specific facts related to that. You know, once they knew about the bankruptcy in HarbourVest of -- I'm sorry, of Acis, HarbourVest made a second funding, which was there was a -- it was an initial $75 million draw, and then a second, I believe, about a $5 million draw, which was in -- I believe in February. And they made it without -- without objection, and that was after the commencement of the bankruptcy.

In addition, they were -- they were active in the bankruptcy, so the -- some of the things that happened in the bankruptcy, there were many opportunities to settle that case, from our examination, all of which were turned down to -- by Mr. Dondero. But you don't see HarbourVest pounding the table to settle, either, either with respect to the Oaktree transaction or any other transaction.

Now, HarbourVest's defense to that is, well, we were taking advice and all of our information from Highland, and we were getting that information directly from senior folks at Highland why -- what the value was and why we shouldn't do those things. We thought that that would mitigate some of the arguments that -- some of the damages that we might have, I'm sorry, if we -- if we lost.

But the focus at that point, you know, our legal strategy, was can we stop HarbourVest at the very forefront to say, You've got to come into the factual realm and get out of the fraud in the inducement realm. And then the defenses and the exculpations and the liability limitations in the documents would also come into play.

So that -- those are some of the defenses that we focused on and our analytical thinking around them.

Q So, if the Debtor had viable defenses, why is it settling?

A Well, this is a significant claim. And we -- we looked at it with respect to both the impact on the case, but, really, the merits of the claim.

As I said, there's really little dispute that the legal fees should not have been charged to HarbourVest. We think based upon the testimony in Acis, the suspect credibility of those who would have been our witnesses, and the experience in Acis that the Court has had in terms of the completely hell-bent on litigation, it would be hard for anyone to justifiably defend those fees being charged. So, as an initial matter, we had exposure there.

In addition, if HarbourVest got by our defense of -- was able, for example, to claim fraud in the inducement, then we were open to significant damages.

We really didn't put much value, frankly, on the RICO part of it. We think that that's waved around often to show treble

damages. Although in this case certainly somebody could lay out the predicate acts and put forth a RICO-type argument, we just didn't think that that had real merit in this commercial dispute, even with a fraud claim.

But even without the trebling of the damages, there's no dispute that HarbourVest lost more than $50 million in this investment. You know, we -- we thought about that risk as well.

In addition, because the case would really be fact-based, even if we had a high degree of confidence based upon our discussions with our employees and the factual testimony, it was going to be expensive to litigate this case, and time-consuming.

And so we looked at the economic value, the potential risks, and the actual value that we were giving up, and found this to be an extremely, extremely reasonable settlement.

Importantly, and I think what drove it, you -- one of -- one of the things that drove it is another one of our defenses on why, notwithstanding their -- what they held out as meritorious claims, I don't think HarbourVest really wanted to publicly litigate this claim. And we were aggressive in our discussions with HarbourVest of how we would litigate it, which would be quite publicly.

Now, that may or may not be fair, but that does put risk on the counterparty. And so I think that helped drive the

settlement.

In addition, the structure of the settlement we think is extremely favorable to the Debtor and to the estate because, rather than taking the full claim and putting it into a senior unsecured position, we have bifurcated it. We did think about whether this was a claim that could be subordinated under 510. There won't be any arguments, I would be surprised if there's arguments today that we didn't actually give to the Highland employees who have given them to Mr. Dondero's respective counsel.

We did structure it in a way that we thought gave HarbourVest the opportunity to effectively claim a rescission, even though that's not really what it is, and then be able to claim that their recovery is based on the bankruptcy, which it is, but not really dilute all the other stakeholders in the case.

(Pause.)

THE COURT: Mr. Morris? Anything else?

MR. MORRIS: I can hear you, Your Honor.

THE COURT: Okay.

MR. MORRIS: I can hear you.

THE COURT: Okay. Now can you --

MR. MORRIS: I got cut off from Mr. Seery for a moment.

THE COURT: Okay.

BY MR. MORRIS:

Q Okay. I appreciate that. Are you done giving the Debtor's basis for entering into this settlement, Mr. Seery, if you can hear me?

A I think so, but I think as the Court has probably seen, I can go on.

Q Yes.

A So I will try to be -- I'll try to be more concise. But this was a -- this was a difficult settlement. We felt good about our defenses. Felt that we could -- we could try them. But it would be extremely expensive, time-consuming, and there would be a lot of risk. And settling at a level which we believe is actually below the damages that were clearly caused only by the fees was a -- was a -- is a -- is a very reasonable settlement.

Q Okay. Let's just talk about the process by which we got to the settlement. Do you recall generally when the settlement negotiations have -- were commenced?

A I believe it was -- was late summer, early -- early fall.

Q Okay. Before I move on, I just want to go back to the Acis matter that you were talking about, one last issue. Do you know how, if at all, the injunction that was entered in the Acis bankruptcy impacted or related to the HarbourVest claims?

A Yeah. I -- yes, I do. And I believe it -- it did. I

think there's an argument, and we analyzed it thoroughly, that the injunction effectively caused a lot of the damages. Because if you look at the values of the equity that HarbourVest had, the -- and HCLOF had in the CLOs, it went down dramatically after the Trustee in the Acis case took over and then subsequently, when the case was reorganized and Mr. Terry took over, you know, with Brigade as the sub-advisor.

Now, that would -- you know, we would -- we could certainly attempt to throw, in our defense, the causation at Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's retort is that none of this would have occurred but for the burn-it-down litigation that Mr. Dondero engaged in with Highland.

In addition, in Mr. Terry's defense, you know, he did try multiple times with HCLOF, tried to petition, if you will, the HCLOF entity to -- and directors, former directors, to reset the CLOs to make them more economically viable, based upon the current level of asset returns versus the debt costs in the CLOs. And that was rejected by the HCLOF and the Debtor as the controlling party of HCLOF. So, we thought about those risks.

You know, similarly, the economic values in Acis 7 went down pretty significantly from that date as well. So I think there's -- there are some defenses, but that's really Mr. Terry's issue, not our issue. So we thought about those

issues, we analyzed them, and we certainly did all the work around month-to-month reductions in NAVs and how different events in the Acis case might have -- might have caused those and was that some sort of break from the original transgression that HarbourVest claims, which was the fraudulent inducement.

Q Do you recall that in November HarbourVest's motion under 3018 was scheduled to be heard?

A Yes.

Q And can you just tell the Court your understanding of what the 3018 motion was about?

A Well, the 3018 motion was going to be on voting. And we took the view that it really was not -- it shouldn't have been that big an issue and HarbourVest should have been content with just taking their actual losses of roughly a $50-$60 million claim for voting purposes and then we would move on.

HarbourVest was very insistent that they have a $300 million claim, because they took the position -- and with extensive documentation; not only the pleadings they filed, but also detailed decks that were prepared by their counsel, which they had presented to us on the merits of their claim -- that they were going to litigate for -- the 3018 and for the full $300 million value.

And that became the genesis, if you will, of the negotiations to settle.

So, we started talking about the 3018. It was very contentious. My apologies to Ms. Weisgerber and her counsel, her partners, because it was a significant and contentious negotiating call. But the reasons for that I think were that -- their insistence on litigating the 3018 and our view that this was just, you know, another -- another of a series of delays and costs in this case that we really were hoping to avoid.

That led to Mr. Pugatch and I stepping away from counsel, no offense to counsel, you know, ours and his, to begin negotiations around the potential for a settlement. First, it started with a 3018, and then, you know, argued that we would, if we got past the 3018, we were going to litigate this, because we effectively had -- thought we could get everyone else done at -- in and around that time. And I think we were also probably a little bit optimistic about UBS at that time and the mediation, which subsequently we have settled. But that was the genesis of those settlements.

Q And how did the structure, how did the Debtor and HarbourVest derive at the structure whereby there is a general unsecured claim, there is a subordinated piece, and there's the takeback of the HCLOF interest?

A Well, as I outlined, we -- we aggressively set forth our various defenses. Their position was that they -- they should never have been in this transaction before. And they --

HarbourVest is, in essence, a fund of funds, and they have investors, and it certainly wouldn't be their, I'm sure, the best-performing asset in their portfolio, to have made this investment and lost $50 million over this period of time. So they felt strongly that they should never have been in this investment, and but for the failure to disclose and the improper disclosures, they would not have been in this investment.

So, optically, getting out of it was important to them, and that led to our idea and construction of a subordinated claim and the transfer of the HCLOF interests to the estate.

Importantly, the HCLOF interests, as I mentioned, are -- the investments are in the Acis CLOs controlled by Acis and Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and the Acis 7.

So we were keenly focused on, if we were going to get that interest, would we then have the majority control in HCLOF, which we will, and would we be able to drive the recoveries, as opposed to what Highland typically does in these investments is use other people's money, drive down the value, and then try to buy back the interest on the cheap.

Q Just in terms of timing, because I think there was a suggestion in one of the openings that there was something untoward about the timing here: At the time the liquidation analysis was prepared on November 24th, had the Debtor reached

any agreement in principle with HarbourVest?
A If we had, it would have been reflected, so I don't -- I don't think we were agreed by then. I don't recall the specific dates, but if we had, it would have -- it would have been reflected.
Q If I can refresh your recollection that the motion was filed on December 24th, does that help form your understanding or refresh your recollection that there was no agreement in principle on November 24th?
A Yeah. Well, I'm quite sure there was no agreement in principle or we would have reflected it minimally by a footnote. There's -- there's no chance. It's a material reduction in the claims pool that we were previously telling people that, at least for purposes of distribution, like UBS and a couple others we said we thought we would get to zero on. So we didn't calculate in that amount. So I'm quite sure we didn't have a deal when we filed the disclosure statement.
In terms of the timing, anyone who's done this business for any degree of time knows that the crucible of bankruptcy brings people to the settlement when they see something happening in the case, and not before. I think HarbourVest looked at our -- this is my supposition -- HarbourVest looked at our plan, our ability to get this done, our settlement with Redeemer, our settlement with Mr. Terry and Acis, and saw that this plan was coming together, and if they didn't think about

the settlement, they were going to think about not only the risks that we laid forth for them with respect our defenses, but also the opportunity to litigate with the Claimant Trustee over a long period of time, which couldn't have been particularly appetizing.

Q Can you describe for the Court the role played by the independent board of Strand, the general partner of the Debtor, in analyzing and participating in the approval process?

A Yes. I think, as the Court is aware and I've testified before, Mr. Russell Nelms and Mr. John Dubel are fellow independent directors with me, appointed pursuant to the Court order. They are kept abreast of every detail, and -- along the way, not just in a summary form at the end. We have reviewed and analyzed collectively each of the issues. Mr. Dubel has extensive experience in these types of litigation matters. Obviously, Mr. Nelms, from his -- both his practice and his time on the bench, has a keen insight into how to resolve and what the risks and benefits are from settling litigation. So I consult them every step of the way.

Q And as part of this process, did the Debtor reach out to the directors of HCLOF?

A Yes, we did. So, we reached out and we've had several conversations on video chats with the directors. The directors of HCLOF are two new gentlemen, Mr. Richard Boleat

and Mr. Dicky Burwood. They are extremely professional. They are exceptionally well-informed. They are truly careful, and I would say very experienced professional not only directors, but experienced in -- in these matters, both in respect of structured finance as well as these types of vehicles and litigation.

They were appointed by the old directors, Scott and Bestwick, and they have been in control. They have outside counsel, which is King & Spalding in the U.S. They have Guernsey counsel. They have accountants and professional advisors, and are being, in my opinion, exceptionally careful. I've got -- very quickly developed a lot of respect for them, and we consulted with them on this settlement and how it would work.

They've been very clear that they represent HCLOF and they work for the benefit of the equity, whomever owns it, and taking a view that they would like to see these assets monetized swiftly, with due regard to value, for the benefit of the equity.

Q And is it your understanding that the directors of HCLOF approved of this transaction?

A They -- I don't know that their approval was required. It's really -- there are a number of hoops to jump through under the documentation, including opinion of outside counsel that we received from WilmerHale in terms of the effectiveness

of the transfer under the documents. We had a negotiation with -- with those directors, and making sure that we did everything correct -- correctly, excuse me -- with respect to the requirements for the transfer under the documents. And they've indicated their support and acknowledgement that we're doing it correctly.

I don't know if it's fair to say they approved it. I'd just have to go check the documents. But they certainly support it. And I think they generally support our position with respect to how to move forward with the assets.

Q I appreciate that. I guess I meant approval with a small a and not a capital A.

You mentioned WilmerHale. Who do they represent in all of this?

A WilmerHale is the Debtor's outside corporate counsel, in particular with respect to the fund issues that we don't handle in-house. We have significant support for fund issues from the expertise of Mr. Surgent, who's been the CCO, and he is also a lawyer, with respect to, you know, some of the difficult fund issues that Highland has. But when we use outside counsel, we use WilmerHale for that, and they've been -- they've been exceptional.

Q Okay. Just the last two points that were made in Mr. Dondero's objection, I believe. Did the Debtor overpay in this settlement in order to gain the support of HarbourVest in

connection with its -- with the Debtor's attempt to get its plan confirmed?

A Not in any way. My -- I believe the settlement is extremely reasonable. As I testified, it's -- it's less than the -- the actual value going out, depending on unless there's successful litigation, and there well could be, is less than on a pro forma basis the fees that were taken and charged to HCLOF. We didn't do this for votes. We will have Class 2, Class 7, Class 8, and Class 9. So I don't think that's a -- there's no vote purchasing, I think you called it. No, not at all.

Q Yeah. Well, on that topic, I think the phrase that was used was gerrymandering. Are you aware of the argument that's been made that the subordinated claim was dropped in there in order to gerrymander a positive vote for the impaired class of Class 9, I believe?

A In a word, I would say that's preposterous. The -- as I said, we have a number of classes that will vote for the plan. The plan is -- the plan is a monetization plan. And if -- if the creditors determine that they don't want to pursue this plan, we'll go forward with another -- we'll try to get another plan. We tried to have a grand bargain plan. We tried to have a pot plan, as I've testified previously. I'm quite certain that I've done more work on that than anyone else, including Mr. Dondero and anybody who works for him.

And he hasn't been willing to do that.

This is a -- this is a plan that's come together. We think it's going to be in the best interests of the estate. That'll be confirmation next week. Or two weeks, I guess. But I don't see how this is any way related -- this settlement is not any way related to the voting on that -- on that -- on that plan.

Q Just to put the finest point on it, is the Debtor relying on Class 9 to be the impaired consenting class?

A No. I think -- I think what I've -- as I said, I believe we already have the votes in Class -- I think it's 2 or 3, 7, 8, and -- and 9 will vote in favor as well. So that won't be an issue.

MR. MORRIS: Your Honor, I have no further questions of Mr. Seery.

THE COURT: All right. Pass the witness. I'll ask HarbourVest counsel first: Do you have any questions of Mr. Seery?

MS. WEISGERBER: No, Your Honor.

THE COURT: All right. Thank you.

What about cross-examination? Mr. Dondero's counsel?

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Seery, how are you doing today?

A I'm well, thank you.

Q I'm John Wilson, and I represent Jim Dondero. I have a few questions for you today.

Now, the HarbourVest proof of claims were filed on April 8th, 2020; is that your recollection?

A I believe that's correct. I don't recall the specific date.

Q Okay. And do you know when you first became aware of the HarbourVest claims?

A I believe it was early in the summer when we filed the omnibus objection. It may have been in late spring, shortly after that. I don't recall the specific date of the filing.

Q And before the time of the filing of the omnibus objection, did Highland educate itself regarding the HarbourVest proof of claims?

A I'm sorry, could you say that again? I didn't quite understand it.

Q Before the omnibus objection was filed, did HarbourVest -- I'm sorry, did Highland educate itself on the HarbourVest proof of claims?

A Not especially, no.

Q Okay. And -- but at some point, Highland did investigate those proofs of claim, correct?

A That's correct.

Q And when would you -- when do you recall that that investigation began?

A I don't recall the date, but the triggering event was HarbourVest's response to our omnibus objection.
Q Okay. And that would have been filed September 11th of 2020?
A I'll take your representation. I don't -- I don't recall the specific date.
Q Okay. And so when you began to investigate the HarbourVest claims, what was your initial reaction?
A My initial reaction was that the -- the larger claims that they were asserting -- the fraud in the inducement, the RICO -- that those claims were, in my view, attorney-made and that when we dug in and did the work, we saw that HarbourVest clearly lost north of $50 million on the investment. We had just started to uncover the fee issue and saw the risk we had there.

But I thought the bulk of those claims were attorney-made. Clever, but attorney-made, as opposed to what I would think are more legitimate. And so we started to develop our defenses around that.
Q And was your initial reaction that the HarbourVest claims were largely worthless?
A I think with respect to the claim around the fees, I believed there was significant risk. With respect to the other claims, I thought our defenses would make them worthless, yes.

Q And did you ever represent to any party that the HarbourVest claim was worth, at most, $5 million?
A I think I represented often, including to HarbourVest, that it was worth nothing. I don't recall if I specifically said $5 million. $5 million would have been a nominal amount to -- which is litigation costs. So it may -- it may have been in my models that I put in that as a settlement amount, but I -- I thought that there were valid and good defenses to those larger claims.
Q And you recognize that HarbourVest was a large, sophisticated investor, correct?
A Yes. I think they manage north of -- right around a hundred billion dollars.
Q And you recognize that HarbourVest routinely structured complex customized investments, correct?
A I believe that -- I don't know the intricate part of their businesses, but as a fund of funds who does creative investments, I think that they do do quite a bit of that. This, I believe, was their first investment in the CLO space.
Q And it was not -- or I should say, you did not believe that HarbourVest was simply a passive investor in HCLOF, correct?
A I don't think that that's true, no.
Q You don't -- you don't believe that you denied their claim to be a passive investor?

A Oh, I think -- I'm sure that in defense of their claims I would argue that they were -- they were more than a passive investor. But it was pretty clear when you look at the structure of what they invested that there was an intent that they be passive on their part. They didn't take a majority interest.

In fact, Highland made it clear in the structure of the deal that they couldn't -- it would be hard for them to get a majority interest because Highland entities would control that and Dondero-controlled entities or individuals would control the majority.

I think that they -- they had hoped to be a passive investor.

Q But was it not your position that HarbourVest was actually an active, involved investor?

A I think our defense was going to be that they knew exactly what was going on, that they participated, that they were active, and that, indeed, that they were in and around some of the subsequent issues in the Acis case.

Q And you understood that HarbourVest played a material role in the various outcomes in the Acis bankruptcy case, correct?

A I don't believe that to be correct, no.

Q Have you ever made that representation to anyone before?

A Not -- not that I recall.

Q Well, do you recall giving statements to a reporter named

Syed Khaderi?
A I've never spoken to a reporter named Syed Khaderi in my life.
Q Well, did you participate in the preparation of statements to be given to Syed Khaderi?
A I've never heard of Syed Khaderi, nor have I participated in any preparation of statements. I don't know who that is.
MR. WILSON: All right. I'm going to have Bryan Assink put on the screen a document.
And Bryan, can you go to Page 7? Bottom of -- the top of Page 7. Well, actually, before you do that, go to the very top of the document.
BY MR. WILSON:
Q Now, Mr. Seery, are you familiar with Lucy Bannon?
A Yes.
Q And who is Lucy Bannon?
A She is the Highland public relations person.
MR. WILSON: Okay. Now go back to Page 7.
BY MR. WILSON:
Q Now, do you -- do you see on your screen an email of September 14th from Syed Khaderi that says, Hi, Lucy, how are you?
A Yes.
Q Have you seen this email before?
A Not that I recall, no.

Q All right. It continues on that, I saw the filing on Friday about HarbourVest claims against Highland for a CLO investment, and I'm looking to put out a report tomorrow morning London time. Ahead of that, I wanted to check if Highland would like to comment on the matter.

MR. MORRIS: Your Honor, this is -- the Debtor respectfully objects. A, this document is not in evidence. B, it's rank hearsay.

THE COURT: Response, Mr. Wilson?

MR. WILSON: Your Honor, I am attempting to authenticate this document, but I'm using it in rebuttal to the testimony that Mr. Seery just offered.

THE COURT: All right. I'll allow it. Overrule the objection.

MR. WILSON: All right. Thank you, Your Honor.

BY MR. WILSON:

Q All right. Now, if we -- and oh, that September 14th date, that was three days after the September 11th date that we discussed was the date that HarbourVest filed its response to the omnibus objection, correct?

A Yes. If that's the date that they filed it, then I -- if you're representing that, I concede that the 14th is three days after the 11th.

Q All right. And if you go back to the first page of this, it looks like, on the following day, Lucy Bannon sends an

email to you, and is that your email address, jpseeryjr@gmail.com?

A That's correct, yes.

Q And do you recall receiving this email from Lucy Bannon?

MR. MORRIS: Your Honor, I renew my objection that this is hearsay. He's not rebutting anything that Mr. Seery testified to. He testified that he'd never heard of the gentleman at the bottom of the document. There's nothing in this document that rebuts Mr. Seery's testimony at all.

THE COURT: Response, Mr. Wilson?

MR. WILSON: Well, I'm not -- I'm not trying to rebut his statement that he hadn't -- that he hadn't heard of Syed Khaderi. My rebuttal is attempted to -- attempting to show that he has made various statements that he denied.

THE COURT: I'll overrule the objection.

BY MR. WILSON:

Q All right. So, back to this exhibit, Mr. Seery. You recall receiving this email from Lucy Bannon on Tuesday, September 15, 2020?

A Not specifically. But to be clear, I recall talking to Lucy Bannon about the HCMLP dispute with HarbourVest.

Q Okay. And --

MR. WILSON: Bryan, can you go down to the next page? Scroll down to where -- the James Seery email.

BY MR. WILSON:

Q Do you see this email on your screen that's dated September 15, 2020 at 10:33 p.m.?
A Yes, I do.
Q And do you recall sending this email to Lucy?
A Not specifically, no.
Q Well, do you deny that you sent this email to Lucy?
A It appears to be my email.

MR. WILSON: Your Honor, we would move to admit this document into evidence as Dondero Exhibit Letter N.

THE COURT: Any objections?

MR. MORRIS: I would consent to the admission of Mr. Seery's email, but the balance of it ought to be excluded as hearsay.

THE COURT: What about that?

MR. WILSON: Well, Your Honor, I think that this document -- and I'll get into this in a little more detail in a second -- but I think this document is a combination of the work product of Lucy Bannon and Mr. Seery in preparing a response for the reporter who requested comment from Highland.

THE COURT: Okay. I --

MR. MORRIS: Your Honor, um, --

THE COURT: Go ahead.

MR. MORRIS: I just -- I do question how they got this document, but that's for another day. That's number one. Number two, in addition to the hearsay argument, I just --

relevance grounds.

THE COURT: Okay. I'll allow the portion that is the communication of Seery, that portion of Exhibit N. All right?

MR. WILSON: Okay. With due -- thank you, Your Honor. With due respect, I -- to use that portion, I need to refer to the portion below it, because he says, Good to submit with your final edit/revisions. And so we need to know what those final edit/revisions are, which are contained in the email directly below that on the document that was four minutes earlier in time.

THE COURT: All right. Fair enough. That'll be allowed.

MR. WILSON: All right. Thank you, Your Honor.

(James Dondero's Exhibit N is received into evidence as specified.)

MR. WILSON: So, Bryan, now can you scroll to the next page? Oh, actually, let's just -- let's just stop at the top -- at the bottom of the page. What's this statement?

BY MR. WILSON:

Q So, to be clear, Mr. Seery, when -- in response to Mr. Khaderi's request for information and comment, you prepared actually two responses, and one of those was a statement on the record attributed to a spokesperson for HCMLP or something along those lines. And then --

MR. WILSON: Can you scroll down to that next page?

BY MR. WILSON:

Q And this says -- I think part of this got cut off for some reason, but it looks like the official statement is in quotation marks. It says, "We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be treating all valid claims in a transparent, orderly, and equitable manner, and vigorously disputing meritless in the court. That focus will assure that HCMLP's reorganization process -- progress is towards an efficient and equitable resolution."

And then below that there's another section of this email that says, Background/Clarification, Not for Attribution. And do you know the purpose of this second section of the response?

A Do I know the purpose of that? Yes.

Q And what would that purpose be?

A Ms. Bannon was speaking on background to reporters. As I said earlier, I've -- I never heard of the gentleman from London. If he's at the bottom of the email, I didn't pay any mind, never heard of him. Nor have I heard it since. Ms. Bannon didn't ever reference the specific person.

But she is the public relations person. So, as I testified earlier, she does communicate with the press. And as I previously testified when Mr. Morris questioned me, one

of our tactics and our defenses for HarbourVest was going to be that we were going to be very public and aggressive about the investment and it would have a negative impact or negative perspective for viewers, in our opinion, about HarbourVest's investment.

Q All right. Well, look with me in the middle of that paragraph right after the closed parenthetical, where it says, "But it's important to note the background of HarbourVest's active and deep involvement in the investment of which it now complains."

And so it was your position that HarbourVest had an active and deep involvement in the investment, correct?

A No. I don't think that's correct. Ms. Bannon prepared the statement, it was a litigation defense on background, and that's our -- that was our position for this purpose. It was not my view that they were active and deeply involved. They were certainly involved. There's no doubt about it. But they got all their information, in our estimation and our research, from Highland.

Q But in any event, you would agree with me that four minutes after receiving this email, you approved this statement to go out to the reporter, correct?

A No, that's not correct. That's -- this portion is on background. That statement doesn't go out. The previous statement was the official statement. This is the background

discussion that she would have. So, no, she was not authorized in any way whatsoever to send that out. She was authorized to have conversations with those general facts.

MR. WILSON: Okay. Bryan, go to the top, or the bottom of the page immediately preceding that. That's it. Yes, that's it right there.

BY MR. WILSON:

Q Now, you'll see that this email from Lucy Bannon on September 15, 2020 at 10:29 p.m. starts off, "Jim, let me know what you think of the below. And, again, the first would be on the record and the second will be sent for information purposes to ensure accuracy, not for attribution."

So the intent was that this -- that this entire statement be sent to the reporter, correct?

A I don't believe that's correct. I think when she goes on background she doesn't send them a written doc. It's got to be clear to the reporter, at least my understanding is that what on background means -- I've been involved with this before -- is that typically that's done orally. I don't know if she's done it in a written statement before. I have never seen that done in a written statement before. You give the official statement and then you walk the reporter through your other views on background. And you're not quoted. And it's usually attributed to a source with knowledge.

Q Okay. We'll come back to that in a minute. The next

sentence after the one I just read to you --

MR. WILSON: Go back to where we were on the background.

BY MR. WILSON:

Q Now, we just read you the sentence that starts with, "Then it's important." The following sentence says, "HarbourVest was not simply invested in HCLOF as an ignorant, unsophisticated, passive investor, but was an active and informed participant in the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF."

And is it -- did you not just tell me before we investigated this document that HarbourVest did not play a material role in the various outcomes of the Acis bankruptcy?

A I don't know exactly what I said, but I think that's correct, after we'd done the research on it, yeah.

Q But you took the position in this email that you approved to go out to a reporter that says that -- that HarbourVest was an active and informed participant in the inception of -- of its investment through all of the Acis bankruptcy proceedings and played a material role in various outcomes related to that case and its impact on HCLOF. Can we agree with that?

A Yes.

Q And then the final sentence of this paragraph says that,

We believe that neither the facts nor the law support HarbourVest's, quote, We-were-too-lazy-to-know allegations.

Whose words were those, "We-were-too-lazy-to-know allegations"?

A I don't recall. They may be mine. It's aggressive the way I am, so that -- that may well be the case.

MR. WILSON: All right. Go -- go down to the next page.

BY MR. WILSON:

Q And with respect your comment that that second paragraph would not have gone to the reporter, look at this email in the middle of the page from Lucy Bannon to Syed Khaderi, September 16, 2020, at 1:51 a.m. And --

MR. MORRIS: Your Honor, this I will object to as hearsay. There is no witness here to testify to anything on this document.

THE COURT: All right. How about that?

MR. WILSON: Well, it's -- well, scroll up just a little bit. This email at the top of the page is three minutes after the one in the middle of the page, where Lucy Bannon is forwarding this to James Seery, saying, See below for responses sent to *Creditflux*. Will follow up with the story when it runs or with any other updates.

MR. MORRIS: Your Honor, these --

MR. WILSON: So I think this --

MR. MORRIS: These documents don't appear on the witness list. They're not being offered to impeach anything. They're just -- he's taking discovery as we sit here.

MR. WILSON: Your Honor, in response, I'm simply trying to rebut the statements that Mr. Seery made. In fact, he told me just a minute ago that that second paragraph would not have gone out to the reporter. However, this email from Lucy Bannon to Syed Khaderi directly rebuts that statement.

THE COURT: But your whole purpose in this line of questioning, with an undisclosed document, is to rebut the earlier testimony he gave before you even put this exhibit in front of him.

MR. WILSON: I'm trying to rebut multiple statements that Mr. Seery has made today, and I think it -- you know, if he's going to testify that this information did not go out to a reporter, I think I'm allowed to rebut that to demonstrate that it did.

THE COURT: All right. Why didn't you disclose this in advance? It's feeling less and less like an impeachment document the more we go through it.

MR. WILSON: Your Honor, I did not -- I did not actually have this document at the time we filed our witness and exhibit list, but I would also say that I didn't have any purpose to use it if I didn't need it for rebuttal.

THE COURT: Okay. First off, you're supposed to

disclose all exhibits you anticipate using except those for purposes of impeachment. Okay? Not rebuttal, to be technical.

So, if you didn't disclose this exhibit, the only way you can use it, subject to other possible objections, is if you're impeaching a statement. And I'm just saying I think we're going beyond trying to impeach the original statement and now we're trying to impeach statements he's made after seeing portions of the document.

What did you mean, you didn't have this document in time to disclose it?

MR. WILSON: Well, I actually just received this document this morning, Your Honor.

THE COURT: Where did you receive it from?

MR. MORRIS: From who?

MR. WILSON: I -- I honestly do not know the source of this document, although it was provided to me by my client.

MR. MORRIS: Your client being Mr. Dondero?

THE COURT: Could you answer that, Mr. Wilson?

MR. WILSON: Yes, that's -- yes, that's correct.

THE COURT: All right. I will -- that's --

MR. MORRIS: Your Honor, I'd like to --

THE COURT: That's a different can of worms. But for now, I sustain the objection. You're done questioning on this document.

MR. WILSON: That's fine, Your Honor. I can move on.

BY MR. WILSON:

Q Now, Mr. Seery, you would agree with me that whether or not HarbourVest played an active role in the Acis bankruptcy, it was kept apprised of the -- of the ongoings in the bankruptcy? (Pause.) I'm sorry. Could you hear that?

A Yes. My understanding is that -- that they were.

Q And in fact, did Highland have weekly conference calls with HarbourVest during the Acis bankruptcy to discuss what was going on in the bankruptcy?

A I don't know if they were weekly. I've been told that they had regular calls updating HarbourVest, yes.

Q Okay. And did Highland produce over 40,000 pages of documents to HarbourVest related to the Acis bankruptcy?

A I'm not aware of that, no.

Q Have those documents been provided to you?

A I hope not.

Q So, in your role --

A I'm sorry. I don't -- I didn't receive 40,000 documents from anybody.

Q Well, did you receive any number of documents that were provided by Highland to HarbourVest during the Acis bankruptcy?

A I wasn't involved in this during the Acis bankruptcy. I'm sorry.

Q Well, I'm referring to, after you became involved in this Highland bankruptcy, whether you were provided with these documents that were sent from Highland to HarbourVest.
A I don't -- I don't know what the documents are. I've reviewed tons of documents with respect to the HarbourVest claims, but I don't know of the documents to which you're referring.
Q Okay. And after you performed your investigation into the HarbourVest claim, what was your opinion as to the cause in the reduction in value of HarbourVest's investment in HCLOF?
A I think the main cause of the reduction in the investment was the imposition of the Trustee and the failure of Highland HCLOF and then subsequently with the injunction to reset the CLOs.

You know, these are -- these are some of the worst-performing CLOs in the market because they weren't reset. And when the liabilities of the CLOs are set at a level to match assets, and then liability -- the assets run off, and the asset financings or the new deals come in at much lower levels, and the obligations of the CLO are not reset, the arbitrage that is the CLO shrinks. And that's what happened to these CLOs.
Q And during the course of the Acis bankruptcy, Acis and Brigade were given management responsibilities over the CLOs and HCLOF, correct?

A I believe that the Trustee had the overall, and then subsequently, with the confirmation of the plan, they took it over. So I think that ultimately Mr. Terry had the management authority, full management authority, and some advice through Brigade. But I think technically it wasn't actually during the Chapter 7. The Chapter 7 proceeding, I believe that Mr. Phelan had the actual authority.

(Echoing.)

Q I'm sorry. And so your testimony is that Mr. Phelan had the actual authority but he delegated that authority to Josh Terry and Brigade?

A I think that's fair, yes.

Q And do you know when that occurred?

A I believe that the control of the CLOs was in July of 2018, and then the ultimate confirmation of the case was at the very beginning of '19.

Q So, after being instituted as portfolio manager, and during the time when Acis and Brigade were working under the direction of the Trustee, who would have receive the fees for managing those portfolios?

A I believe -- I don't know. I believe the -- that the Acis estate would have received those fees.

Q And who -- and so is that your testimony, that prior to confirmation the Acis estate would have received the management fees?

A I believe that -- I believe they would have if they were the manager, yeah.
Q Okay. And who would have received the fees after confirmation?
A Acis.
Q Okay. And who would have had the discretion to set the amount of those management fees?
A They would be agreed to in the -- in the investment management agreement.
Q They would be agreed to?
A Yes. As far as I've seen, I've -- I haven't seen unilateral ability of a manager to set fees at its -- at its whim.
Q So is it your understanding that Acis and Brigade ended up charging substantially more fees than Highland had charged when it was under Highland's management?
A I think the fees were -- the fees were -- the fees were set by the agreement.

MR. MORRIS: Your Honor, I just object to the line of questioning on relevance grounds. This is a 9019 hearing, Your Honor. How -- I just don't think this has any relevance at all.

THE COURT: All right. Mr. Wilson, what is the relevance?

MR. WILSON: The relevance is that Mr. Seery has

testified that these Acis CLOs were among the worst-performing in the market, and frankly, we would agree with that, and I'm trying to get his understanding as to why, because I think there's direct relevance in the reason that the value of the HarbourVest investment diminished.

MR. MORRIS: I don't think that was his testimony, Your Honor. But at the end of the day, Your Honor has heard the litany of reasons why the Debtor is entering into this agreement. I just, I just think it's irrelevant, Your Honor.

THE COURT: All right. Mr. Wilson, I barely think this is relevant. I mean, I'm going to give you some benefit of the doubt on that because of, you know, the testimony that HarbourVest lost $50 million of value and --

(Echoing.)

THE COURT: -- maybe that shouldn't, you know, lie at the feet of Highland. I think the compromise reflects that they don't -- it doesn't lie entirely at the feet of Highland. But, you know, maybe two or three more questions.

MR. WILSON: Yes. Thank you, Your Honor. And I didn't have very much more on this point. But to be a hundred percent honest, I can't remember my question right before the objection.

THE WITNESS: I think you were asking me about the fees and somehow alluding or implying that the manager could unilaterally set fees.

The fees are set in the investment management contract. The manager doesn't get to wake up on Wednesday and say, you know, I'd like another half a basis point. It doesn't work that way.

BY MR. WILSON:

Q But you would agree with me that the fees and expenses charged to an investment would impact the performance of that investment in the market?

A Absolutely.

Q Would you also agree with me that there was one CLO -- and I think you referred to it in your direct testimony -- but CLO 7, which continued to be managed by Highland?

A That's correct.

Q And is it fair to say that CLO 7 exceeded the performance of the CLOs that were managed by Acis and Brigade?

A I think that's fair. I don't -- I don't recall the magnitude, but I think it's outperformed those -- those CLOs, yes.

Q All right. Well, thank you. I want to turn your attention to the portion of the settlement agreement that deals with voting of the HarbourVest claim. How did HarbourVest's commitment to vote for the plan become a part of the settlement?

A Pretty straightforward negotiation. We -- in negotiating the settlement, one of the key factors was the cost and

expense of the litigation, in addition to the risk on the -- on the fees, and whether we could wrap this up in a global settlement now. So in my experience, it's fairly typical, we would try to do this in every settlement, have the settling party, be that the claimant, agree to support the case and the plan.

You know, we did not do that with the Committee members, although we wanted to. (Echoing) I frankly still wish I had. Those little -- little bits that have been difficult (echoing). The Committee members have a different interest in (echoing) than their more global interest for creditors at large, which is more difficult than traditionally in bankruptcy cases, less likely to have a Committee member, a sitting Committee member, actually support the (echoing) of the plan.

THE COURT: Mr. Wilson, could you be careful to put your device on mute every time you're not talking? Because we're getting some feedback loop from you when Mr. Seery answers your questions. Okay?

(Echoing continues.)

THE COURT: Like right now. I'm hearing feedback of my own voice through your speakers.

Right, Mike? Isn't that what --

A VOICE: I am, too.

THE COURT: Yes. Okay. So please be sure you put

your device on mute whenever you are not speaking. All right. Go ahead.

BY MR. WILSON:

Q I mean, I think you just answered this question, but there was -- there was no similar voting provision in the Acis or the Redeemer settlements, correct?

A There is not, no. And just as a -- by way of explanation, if it's okay, the reason was my counsel advised against it. I did ask for it.

Q Your counsel advised against putting that voting requirement in the Acis and Redeemer settlements?

A For the reasons I stated. And in my experience, that's consistent, where sitting members of Committees don't generally sign up to resolve their own claims and support the plan because of their larger fiduciary duties to the creditor body as a whole.

Q And during the settlement negotiations of the HarbourVest claim, was this commitment to vote a topic of discussion?

A Not -- not particularly, no. It was pretty clear that HarbourVest, if they were going to agree to the settlement and the numbers, could see structure. Obviously, it wanted to understand what the potential distributions would be under the plan, but this was not a hotly-negotiated point.

Q And would you consider HarbourVest's commitment to vote for the plan an important part of the settlement?

A I think it's an important part of the settlement, that the part of the settlement is the subordinated claim. We could put that into presumably any plan. But our plan does -- does have a Class 9 for that. So I think it's a -- it's a part of the settlement that is important or we wouldn't have included it. It clearly wraps everything up and moves us towards confirmation.

Q And would you have made the deal with HarbourVest if they had pushed back on the commitment to vote for the plan?

A Yeah, I would have.

Q All right. Thank you.

MR. WILSON: No further questions.

THE COURT: All right. Mr. Draper, anything from you?

MR. DRAPER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Seery, I may not understand the settlement, and I apologize, but the way I think the settlement reads, the interest that you're acquiring, you have the right to place in any entity. Is that my -- is that correct?

A I don't recall the -- the specifics, but just from a structural standpoint, we wanted to be able to put it into a subsidiary as opposed to putting it directly in HCMLP. If we couldn't do that, we would -- we would put it into HCMLP. So

there wasn't a -- I don't recall the actual specifics, but we certainly thought about holding that interest in a -- in a subsidiary, just to have a cleaner hold.

Q Why aren't you putting it into the Debtor so the Court and the estate have jurisdiction over that?

A I think the Court certainly has jurisdiction over an entity that the estate owns a hundred percent of. I don't think that's -- that's even a close call. So the important --

Q Now, --

A Can I finish?

Q Sure.

A You asked me why. To the extent that somebody thinks that problematic, I will consent to the Court having complete jurisdiction over it, since I control it a hundred percent.

Q No. The real reason is, if I remember correctly, Mr. Dondero and Judge Lynn filed a motion to have some say or some information as to sales by subsidiaries, and I think you took the position that they weren't entitled to it. And so my concern was that putting this in a subsidiary in a sense gave you unfettered control without any review of the item.

A I don't -- I don't think that's the case where we -- there's a directly-held subsidiary where we own a hundred percent of it. I don't think that that's the case.

Q Okay. But you're willing to (a) put this into the Debtor, number one; and number two, have the estate and have the Court

have complete control over the disposition of it and its actions, correct?

A That's not correct, no.

Q What -- what is incorrect about my statement?

A The debtor-in-possession has control of its assets. The Court doesn't have complete control over its assets. There's --

Q Well, --

A -- issues -- hold on a second. This is not -- this is not a game and a trap. We put it in a subsidiary for specific reasons. You asked why. I'm giving you the why. It's not to hide it from anybody. We're not going to sell the asset unless somebody comes up with a great price for it. We're going to monetize the assets. We're going to control HCLOF by a majority.

Q But, again, the issue is, if it's in the estate, the Court has supervision over it. If it's not in the estate, the Court has no supervision of it.

A I don't think that's correct, because the Court has supervision over the estate, which owns a hundred percent of the special-purpose entity that will own the shares.

Q Okay. All right. Now, let's talk about the $15 million that you discussed and the legal fees that were incurred. Is that the total amount that was spent, or is -- or is that -- was the total amount $30 million and HarbourVest was only

responsible for one half of it or functionally took the brunt of one half of it?

A I think the total amount is between $15 and $20 million. I don't have the exact numbers.

Q So, in fact, the HarbourVest loss due to its ownership would have been one half of that, not $15 million?

A Well, the vehicle lost the money. HarbourVest owned 49.98 percent of it, and Highland controlled the rest. So if you allocate it that way, I suppose that would be a -- that's how you would divide it, in -- roughly in half, yes.

Q And so HarbourVest's actual dollar loss due to the legal fees is really the 49-point-whatever percent of $15 million, not $15 million?

A I don't know if -- I certainly would argue that. I don't think that HarbourVest has that position.

Q Okay. Now, in connection -- you were asked a question about the documentation that was provided by Highland to HarbourVest both during the bankruptcy of Acis and before. You have control over the Harbour -- over the Highland server, correct?

A I'm sorry. Can -- can we do two things? One is, Mr. Draper, I can't see you, so it would be better if I could see you during the questioning.

Q Okay.

A And could you repeat the question?

Q All right. I'll be happy to. You were asked a question about the documentation that was provided by Highland to HarbourVest during the Acis bankruptcy and meetings that took place between the parties. Correct?
A Yes.
Q And you stated you were unaware of the material that was sent over?
A I think I testified that I didn't receive the 40,000 documents that were mentioned.
Q Did you do any search or order a search of the Highland server to see what material was sent over by any party to HarbourVest to analyze what -- what information they had available to them and what was provided to them?
A Yes, we did a search.
Q And did you review the documentation that was sent over?
A The -- the documentation that we looked at was very specific to the investment and to the OM. So we didn't look for the -- the supposed 40,000 documents, no.
Q Did you look for the material that was provided to them during the Acis bankruptcy and the periodic meetings that you discussed? Or that you testified to earlier?
A The answer is no.
Q One last question. I think, and just so I understand your testimony, you've broken out the HarbourVest claim into two pieces. One is the legal fee amount that we've just

discussed, and I gather the other piece of that is the fraud in the inducement to enter into the CLO purchase?

A It's -- it's more -- it's much more than that.

Q Okay. Well, let me say it in a different way. The other part of it is the losses as a result of the fraud in the inducement to purchase the interest?

A I don't think that's -- that's fair. If I could explain?

Q Sure.

A Yeah. The legal fee piece is pretty clear. The other piece starts with fraud in the inducement, but it's extensive fraud claims. Fraud in the inducement, as I testified earlier, would get them around the exculpation and liability limitations in the OM. You don't get around all of those with just the fraud. And so that's -- that's the split of that claim. So the fraud in the inducement contains fraud allegations. Even if you didn't have inducement, you'd have other potential fraud claims.

Q But let me state it in a different fashion. But for the investment, the fraud that you allege wouldn't have occurred?

A I -- HarbourVest alleges it.

Q No, I'm just -- in your analysis of the claim, but for the inducement, the rest of the damages wouldn't have flowed?

A That's HarbourVest's position, yes. But for the fraud, they wouldn't have made the investment.

Q All right.

MR. DRAPER: I have nothing further for this witness.

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

MR. MORRIS: Just a few very questions, Your Honor. Just a very few questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, you were asked about that document that Lucy prepared. Do you remember that?

A Yes, I do.

Q In your experience, don't defendants often deny liability before entering into settlements, or even worse, getting adverse judgments entered against them?

A Of course. Yes.

Q Okay. And in response to Mr. Draper's questions, isn't the Guernsey claim another claim that the Debtor took into account in assessing the potential risks of this settlement?

A There's a number of claims contained in it. As I mentioned earlier, I mentioned the RICO claim. But there is a Guernsey shadow director claim, which is not dissimilar to U.S. claims that somebody effectively controls an enterprise, notwithstanding them not having the official role.

Q Okay.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: All right. Any recross on that redirect? All right.

MR. WILSON: No, Your Honor.

MR. DRAPER: No, Your Honor.

THE COURT: Thank you. Mr. Seery, that concludes your testimony. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: We need to take a bathroom break. Before we do, I just want to be clear with what we have left. As I understood it, we were having Mr. Pugatch from HarbourVest. Mr. Morris, will that conclude the Debtor's evidence? (Pause.) Okay. You were on mute, but I think you were saying yes.

MR. MORRIS: Sorry. But to be clear, Debevoise is going to be putting their witness on the stand.

THE COURT: Okay.

MR. MORRIS: But it's part of the evidence in support of the motion.

THE COURT: All right. Do the Objectors have any witnesses today?

MR. WILSON: Your Honor, Mr. Dondero intends to examine Mr. Pugatch, but if he's going to be called by his counsel, then we will do that as a cross-examination.

THE COURT: All right.

MR. DRAPER: This is Douglas Draper. I have no witnesses.

THE COURT: Okay. All right. Well, I'm asking --

well, I do want to ask: Can we get a time estimate potentially for Mr. Pugatch?

MS. WEISGERBER: For my examination, Your Honor, twenty minutes, perhaps.

THE COURT: Okay.

MS. WEISGERBER: Or less.

THE COURT: All right. Well, let me tell you what we're going to do. We're going to take a ten-minute bathroom break. But I have a 1:30 hearing and I have a 2:00 o'clock. Well, I have a 1:30 docket, multiple matters, and a 2:00 o'clock docket. So, you know, I'm really intending that we get finished in time to give me and my staff a little bit of a lunch break before launching into the 1:30 docket, so I'm hopeful we can get done around 1:00-ish. If we can't, then we're going to have to reconvene, I'm going to say probably 3:00-ish Central time. So let's hope we can get through everything. All right? Ten-minute break.

THE CLERK: All rise.

(A recess ensued from 11:58 a.m. until 12:08 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matters. Do we have everyone? It looks like we do. Ms. Weisgerber is going to call the next witness; is that correct?

MS. WEISGERBER: Yes, Your Honor. We call Michael

Pugatch of HarbourVest to the stand.

THE COURT: All right. Mr. Pugatch, if you could turn on your video and say, "Testing one, two."

MR. PUGATCH: Two.

THE COURT: All right. There you are. Please raise your right hand.

MICHAEL PUGATCH, HARBOURVEST'S WITNESS, SWORN

THE COURT: Thank you. You may proceed.

MS. WEISGERBER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WEISGERBER:

Q Good morning. Can you please state your name for the record?

A Sure. It's Michael Pugatch.

Q And where do you work, Mr. Pugatch?

A HarbourVest Partners.

Q And what is your title?

A I'm a managing director in our secondary investment group.

Q Did HarbourVest file claims in the Highland bankruptcy, Mr. Pugatch?

A We did, yes. Several claims, in fact.

Q What was the basis for those claims?

A Yeah. Among other things, fraudulent inducement based on misrepresentations and omissions on the part of Highland in

connection with our original investment, mismanagement at the HCLOF level, including inappropriate fees that were charged to investors, among a number of other items as well.

Q Can you explain what you mean by misrepresentations made to HarbourVest by Highland?

A Yeah, sure. So, you know, based on a number of statements that were made to us around the litigation involving Mr. Terry, some of the intentions found, the structural changes that came to light with respect to HCLOF and our investment, as well as the fact that the arbitration award specifically against Mr. Terry would have no impact or implication on Highland's sale or business.

Q And can you explain what you mean by omissions made by Highland to HarbourVest?

A Sure. So I would say, really, the implications behind the structural changes that were made at the time of our investment into HCLOF. Also, the intention, clear intentions that Highland had to never, in fact, pay the arbitration award that came to light during our due diligence period to Mr. -- to Mr. Terry as part of the investment. And ultimately the -- what Highland went about doing in terms of stripping assets of Acis that led to the material value declines and destruction of value that we've experienced since our investment.

Q You mentioned a diligence period. Did HarbourVest

conduct diligence on the investment?
A We did. We conducted very detailed due diligence, as we do for all of our investments. That diligence period lasted several months ahead of our investment decision.
Q And did HarbourVest conduct that diligence by itself?
A No. So, in addition to internal investment professionals at HarbourVest, we engage with outside advisors, both consultants as well as legal advisors, in connection with that due diligence.
Q And did Highland answer all of HarbourVest's questions during that diligence period?
A They did. And they were numerous. But yes, they answered all the questions that we had for them.
Q Was the Terry dispute part of HarbourVest's diligence?
A It was. That came up as one of the outstanding items of litigation as part of our due diligence.
Q I'm going to ask my colleague to pull up on the screen an exhibit that was on our exhibit list as Items -- Exhibits 34 and 35. It's an August 15, 2017 email from Brad Eden to Dustin Willard. Mr. Pugatch, do you recognize this document?
A I do, yes.
Q And what is it?
A This was an email sent to us during our due diligence period in response to a request for more information on the outstanding litigation that Highland was involved with.

MS. WEISGERBER: And if my colleague can just scroll to the attachment to that email.

BY MS. WEISGERBER:

Q And do you recall the attachment as well, Mr. Pugatch?

A Yes, I do.

MS. WEISGERBER: And if you can scroll back up to the first email.

BY MS. WEISGERBER:

Q Who is Dustin Willard?

A Yes. Dustin is a colleague of mine at HarbourVest who worked closely with me on this investment.

Q And you said that this document was shared with HarbourVest during the diligence period before the HCLOF investment?

A It was, correct.

Q Is it typical during diligence to receive a description of litigation such as this?

A It is. It's a question that we always ask. Certainly a component of our diligence to understand any outstanding litigation on the part of our counterparty or manager that we're investing in.

MS. WEISGERBER: Your Honor, I'd move to offer this exhibit into evidence.

THE COURT: Any objection?

MR. DRAPER: No objection, Your Honor.

MR. MORRIS: No objection from the Debtor, Your Honor.

THE COURT: All right. What is the letter or number for this exhibit?

MS. WEISGERBER: It's HarbourVest Exhibit 34.

THE COURT: All right. So HarbourVest Exhibit 34 is admitted.

(HarbourVest's Exhibit 34 is received into evidence.)

THE COURT: And I need to be clear where it appears on the docket. Can someone tell me?

MS. WEISGERBER: So, it's identified on our exhibit list, not -- it's not attached to the exhibits. It is on the docket. We were -- when we initially filed the exhibit list, we were working out confidentiality issues. But it was subsequently filed with our reply last night. It's at Docket No. 1735 --

THE COURT: All right.

MS. WEISGERBER: -- at Pages A -- Pages A345 to A350.

THE COURT: All right. Very well. Thank you.

BY MS. WEISGERBER:

Q Mr. Pugatch, we'll just scroll down to the second page of the attachment. Can you describe generally what the litigation says regarding the Terry dispute?

A Yes. Generally speaking, this dispute was described as an employee dispute, employment agreement dispute, with Mr.

Terry, who was a former employee of Highland involved in their CLO business, and is described by Highland to us really having to do with a series of false claims, in their opinion, but having to do with a disgruntled former employee.

Q And did it strike you as an unusual or significant dispute?

A No. I would say we often -- we'll see, you know, former employees with, you know, claims against a former employer in connection with wrongful termination. I wouldn't say it's extremely common, but certainly not entirely out of the ordinary. And based on the explanations that we'd received from Highland, seemed to be more of an ordinary-course type former employee litigation suit.

Q Based on what you now know about the Terry dispute, do you believe that this was an adequate disclosure regarding the dispute?

A I would say very clearly not, you know, based on the facts that came to light subsequently, the various rulings in connection with the Acis bankruptcy case. What was very clearly not stated are the actual facts and implications of the ongoing litigation with Mr. Terry.

MS. WEISGERBER: I'd ask my colleague to put up the next exhibit. Okay. So, this is on a HarbourVest exhibit list, which is Document No. 1723. It's Exhibit 36 on that. Same issue with respect to initially not filed, but it is on

the docket at our response last evening at ECF No. 1735 at Page A351.

THE COURT: Page what?

MS. WEISGERBER: A351.

THE COURT: A351. Thank you.

MS. WEISGERBER: You're welcome.

BY MS. WEISGERBER:

Q Mr. Pugatch, I just put up a November 29, 2017 email from Hunter Covitz to Dustin Willard, Michael Pugatch, and Nick Bellisario. Do you recall this document?

A I do, yes.

Q And what is this document?

A This was an email sent to us by Highland a couple weeks after we closed on our investment on the (inaudible) in response to a *Wall Street Journal* article that had come out regarding Highland, a number of actions that they had taken, and what Highland was articulating to us, a number of false claims that had been made about Highland's prior actions, and specifically trying to explain some of that and also share with HarbourVest a letter that was being sent to the editor of the *Wall Street Journal* highlighting, in their view, some of the inaccuracies around the reporting.

Q And did you receive this document?

A We did, yes.

MS. WEISGERBER: I'd move to offer this, so

HarbourVest Exhibit 36, into evidence.

THE COURT: Any objections?

MR. WILSON: Your Honor, John Wilson. I would object as to the relevance of this document.

THE COURT: All right. What's your response?

MS. WEISGERBER: Your Honor, it shows misrepresentations that the witness will testify how it relates back to prior representations prior to HarbourVest's investment, as well as misrepresentations at that time.

THE COURT: Okay. I overrule the objection. I'm going to admit it.

(HarbourVest's Exhibit 36 is received into evidence.)

BY MS. WEISGERBER:

Q Mr. Pugatch, can you describe generally -- we spoke about this a little bit -- just what this communication from Highland was conveying to HarbourVest at the time?

A Yes. Specifically, again, responding to this *Wall Street Journal* article that had been published, trying to defend, again, Highland's own views why there were inaccuracies in the reporting. But importantly, from our perspective, trying to reassure us as to the fact that, you know, these accusations would have no bearing and any results from it would have no bearing on their ongoing business or partnership or the investment that we had made in HCLOF.

MS. WEISGERBER: And if you can scroll to the second

page.
BY MS. WEISGERBER:
Q We'll just look at the last paragraph of another email from Mr. Covitz. Can you just read that first sentence of the last paragraph?
A Sure. (reading) While the dispute has no impact on our investment activities, as always, we welcome any questions you may have.
Q Mr. Pugatch, was this email and the discussion regarding the Terry dispute consistent with the representations made to you prior to HarbourVest's investment into HCLOF?
A It was, yes. Both the message, the lack of any impact that ultimately the dispute with Mr. Terry, the arbitration award would have around Highland's ongoing CLO business, or HCLOF specifically, was all, you know, very clear in this document, but all consistent with the representations that had been made to us leading up to our investment in the middle of November 2017 as well.
Q Thank you.
MS. WEISGERBER: And you can take down the exhibit, Emily. Thank you.
BY MS. WEISGERBER:
Q You mentioned, Mr. Pugatch, an arbitration award to Mr. Terry. How did you learn about that arbitration award?
A That was initially disclosed to us by Highland as we were

in the late stages of our diligence and closing process on the investment into HCLOF.

Q And generally, what did Highland tell you about the arbitration award?

A We were aware of its existence. We were aware of the quantum of the award, I think it was around an $8 million arbitration award in the favor of Mr. Terry, and that was following the litigation around the wrongful termination and employee dispute that Highland had described to us previously.

Q Did you ask to see a copy of the arbitration award?

A No, we did not.

Q Why not?

A Ultimately, we -- you know, the explanations that Highland had provided to us all seemed very reasonable. We relied on their representations that this was, again, nothing more than a dispute with a former disgruntled employee, in their words, that had no bearing or, you know, would not have any bearing on our investment in HCLOF or their ongoing CLO business, which all very clearly was not the case, as we've -- as we've learned over the last several years.

Q Following learning about the arbitration award, did HarbourVest do other diligence?

A We did. So, in addition to asking questions related to the arbitration award and any impact that it would have, we

also spent some time diligencing a couple of structural changes that were proposed by Highland, and, in fact, ended up delaying the closing of our investment by about two weeks as we vetted some of those structural changes that Highland had proposed. Vetted those both, you know, internally with Highland directly and with external counsel in order to make sure that those structural changes were in fact legally sound in ultimately making our investment.

Q And were those changes proposed following the arbitration award?

A They were, yes.

Q Did Highland tell you the reason for the structural changes?

A Yeah. So, so some of this -- and specifically, this involved a change of the portfolio manager at the HCLOF level that was really in connection with a rebranding as Highland was going through a rebuild of its CLO business and wanting to align, from a brand perspective, their business on an ongoing basis with the Highland brand as opposed to the Acis brand. But more specifically, in the case of a late change from a structured standpoint, the -- part of the intention and the investment thesis of HCLOF was to pursue a reset, a refinancing of all the underlying CLOs as they approached the end of their investment period or came out of their investment period.

And in connection with that, in light of the arbitration award, Highland's view was that there may be difficulties in the market in resetting certain of those Acis CLOs with the Acis brand associated with them, given, again, the existence of the arbitration award and concerns in the market around the Acis brand reputation.

Q And what did they tell you was the market view of Acis, or the Acis brand?

A Yeah. Their view or their concern was that the, you know, because of the existence of that arbitration award, the brand would be viewed as toxic.

Q Didn't this put you on notice that perhaps there was something wrong with the structural changes?

A I mean, we -- I mean, short answer, no. We ultimately asked questions, we diligenced the legal structure, but relied on the representations that were made to us by Highland around the rationale for the structural changes, that these are all changes that were within a Highland-managed vehicle or sat below the vehicle that we were investing in, and so ultimately were in Highland's purview, was the representations that we relied on.

Q And did HarbourVest alone do that diligence of the structural changes?

A So, no. I mean, in connection with the diligence that we did internally and with Highland directly, we engaged with

outside counsel who was working with us at the time to vet those structural changes as well.

Q Did HarbourVest rely on Highland's representations regarding the arbitration award and the structural changes in making its investment in HCLOF?

A We did, absolutely.

Q If Highland had disclosed the nature of the structural changes, of removing Acis as the portfolio manager and related transfers, would HarbourVest have proceeded with its investment?

A Definitively, no, we would not have.

Q Why not?

A I think the reality is if we had understood the intent, you know, that Highland was ultimately undertaking here, we would not have wanted to be any part of this, and certainly getting dragged into all of this, the hassle, the value destruction that we've seen on behalf of the investors and the funds that we manage. And I would say, lastly, we just full stop would not have done business with a firm who engages with this type of behavior, had we actually known the truth.

Q Mr. Pugatch, are you familiar with the bankruptcy that followed of Acis?

A Yes.

Q And what was your -- or, did HarbourVest participate in

that bankruptcy?
A So, initially, no. Subsequently, we ended up getting dragged into that on account of a number of misstatements by Highland about the role that HarbourVest had played as part of our investment into HCLOF and some of that structure and the structural changes that I alluded to.
Q How did HarbourVest learn about those misstatements in the bankruptcy about HarbourVest's role?
A So, ultimately, those came to light on -- you know, on account of the ongoing proceedings within the Acis bankruptcy process, and specifically brought to light to us by the Acis trustee at the time, who decided to pursue, you know, further diligence or discovery around the claims that Highland had made around HarbourVest's involvement in those changes.
Q And what is your understanding of what the allegations were that caused the Acis trustee to investigate HarbourVest?
A Sure. So, you know, our understanding was that Highland had made statements, again, false statements that HarbourVest had actually instructed some of those structural changes, that we were the ones that had said that we would not do business with Acis and had ordered some of the underlying transfer of assets or, again, structural changes, that, you know, very clearly I would say were not the case. Also, that HarbourVest was -- was calling the shots as it relates to any of the ongoing management or future resets of the CLOs.

Q Did HarbourVest instruct any of those structural changes or transfers to occur?
A We did not. Absolutely not.
Q Why didn't HarbourVest itself appear in the Acis bankruptcy and file a claim?
A Yeah. HarbourVest's role, again, in HCLOF, we were a passive investor in a Highland-managed company. We had no direct interaction with or relationship with Acis. There was really no reason for us to be directly involved until we were subsequently dragged into involvement on account of those misstatements. And then at that point our focus really pivoted to, you know, whether we needed to defend ourselves against those accusations that had been made by Highland and after a request for further information in discovery by the Acis trustee.
Q Did HCLOF participate in the Acis bankruptcy?
A They did, yes.
Q Did HCLOF incur fees for participating in the Acis bankruptcy?
A Yes. In fact, very meaningful fees, to the tune of well in excess of $15 million of legal fees, as we understand it, that have been incurred, largely in connection with the ongoing Acis bankruptcy and Highland's continued pursuit of and in connection with the litigation with Mr. Terry, which we firmly believe was entirely inappropriate that HCLOF and

ultimately investors in HCLOF bear those expenses, which were not just expenses of HCLOF but of Highland and a number of other Highland affiliates.

Q Do those expenses form a basis of separate claims filed by HarbourVest against Highland?

A They do, yes. One of the multiple claims that we had filed against Highland.

Q And a few more questions, just for the record, Mr. Pugatch. How much did HarbourVest initially invest in HCLOF?

A Sure. So, our initial investment in November of 2017 was right about $73-1/2 million, I believe.

Q Did HarbourVest invest any additional money in HCLOF?

A We did. There was a subsequent capital call investment of about $5 million, bringing our total investment to just under $80 million in aggregate.

Q When HarbourVest initially made the investment, did it anticipate making a profit on it?

A We did, yes.

Q How much did HarbourVest anticipate earning from the investment?

A Yeah. So, our -- based on the original $73-1/2 million investment, we had expected a total return of about $137 million on that -- on that investment.

Q What was that projection based on?

A So, that projection was based on materials that we had

received from Highland, their internal projection models on the future performance of the underlying CLOs that we were acquiring exposure to through our investment in HCLOF, and was one of the inputs or formed the basis in connection with our diligence that we ultimately ran different sensitivities -- projections around and helped employ -- helped inform our investment thesis.

Q Do you know the current value of HarbourVest's investment in HCLOF?

A Yes. The current value is right around $22-1/2 million.

Q So roughly how much has the investment itself decreased from HarbourVest's initial investment?

A So, net of what was about $4-1/2 million of distributions that we received early on in the investment, we've lost, to date, in excess of $50 million on our original investment.

Q And just for -- to close out, Mr. Pugatch, knowing all that you know, if HarbourVest had known that -- about the nature of the transfers by Acis or Highland's intent with respect to the arbitration award, would HarbourVest have made this investment?

A No. The reality is, had we known the truth, or even had a sense of the truth, the true intentions behind some of those transfers and ultimately what would have happened, we never would have made this investment, full stop.

Q Thank you, Mr. Pugatch.

THE COURT: All right. I didn't hear you, Ms. Weisgerber. Do you pass the witness?

MS. WEISGERBER: Yes, I pass the witness.

THE COURT: All right. Thank you.

Mr. Morris, any examination from you?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right.

(Interruption.)

THE COURT: All right. I'm not sure whose voice that was, but please, again, mute your devices when you're not talking.

Any cross-examination of Mr. Pugatch? I'll start with you, Mr. Wilson.

MR. WILSON: Yes, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. WILSON:

Q How are you -- I guess we're afternoon now. How are you this afternoon, Mr. Pugatch?

A I'm doing well. Yourself?

Q I'm doing well as well. Do you recall that on Monday of this week I took your deposition?

A Yes, I do.

Q And so you understand that my name is John Wilson and I represent Jim Dondero, who has filed an objection to the 9019

motion filed by the Debtor?

I've got a few questions for you today. Has HarbourVest been around for over 35 years?

A We have, yes.

Q And does HarbourVest have ten offices around the world?

A Correct, yes.

Q And does HarbourVest employ over 150 investment professionals?

A Yes.

Q Does HarbourVest have over $74 billion in assets under management?

A Correct, yes.

Q And is HarbourVest's client base largely comprised of institutional investors?

A Also correct.

Q And you would agree with me that HarbourVest is a sophisticated investor, right?

A I would, yes.

Q How long have you worked for HarbourVest?

A I've been employed by HarbourVest for 17 years now.

Q And how long have you been a managing director?

A I've been a managing director for approximately six years.

Q And you were, in fact, the managing director for the investment that HarbourVest made in Highland CLO Funding,

Ltd., which has been referred to today as HCLOF, correct?
A I was, correct.
Q And HarbourVest, I think you just testified, invested approximately $73 million as its initial investment in HCLOF?
A Yes, correct.
Q And before HarbourVest made that investment, it had made many investments of this type, correct?
A Yeah. We've made hundreds of investments into partnerships over our history, correct.
Q So HarbourVest was well-experienced in evaluating and deciding whether to invest in large investments, correct?
A It was, yes.
Q Now, in your -- and by your, I mean HarbourVest -- in the response to the Debtor's omnibus objection, it says that by summer 2017 HarbourVest was engaged in preliminary discussions with Highland regarding the investment. Is that a correct statement?
A Correct, yes.
Q And, in fact, those talks began in the second quarter of 2017, correct?
A Yes.
Q And so the investment closed ultimately on November 15th, 2017?
A Yes, that's correct.
Q So it's fair to say that HarbourVest considered and

evaluated this transaction for over six months before investing its $73 million, right?

A From the time of the initial conversations that we had with Highland, yes.

Q And one of the reasons that it took over six months to complete the investment is that HarbourVest performs due diligence before it makes an investment, correct?

A Correct.

Q And when you're performing due diligence -- well, first off, you would agree with me that that's a common practice amongst sophisticated investors such as HarbourVest, correct?

A To perform due diligence?

Q Yes.

A Yes.

Q And describe -- describe what HarbourVest does in a general sense when it performs its due diligence.

A Sure. So, we spend time with the manager -- in this case, Highland -- certainly around the investment thesis, the opportunity, receive materials around the underlying assets. We take that and perform our own independent due diligence around the value of those assets, perform due diligence on the manager itself, the go-forward opportunity. In many cases, and certainly in this case, engage with outside advisors to assist with that due diligence. It's a very robust and thorough process.

Q And by outside advisors, are you referring to the outside counsel that you testified about earlier?
A Yes. Both outside counsel and outside consultants.
Q Okay. And so did you say that it's typical to engage outside counsel when performing due diligence?
A Yes.
Q And which outside counsel did you retain with respect to this due diligence?
A Debevoise and Plimpton as well as Milbank.
Q And during the course of HarbourVest's due diligence, did it identify some items of concern?
A As with any investment, there are always items that are identified that require further diligence, risks that are identified that we look to mitigate through our due diligence, et cetera.
Q And if Harbour -- I'm sorry, did you say something else?
A No.
Q You were finished? Okay. Now, if HarbourVest identifies an item of concern, is it typical to request additional information regarding those items of concern?
A It is, yes.
Q And so that actually happened with respect to the HCLOF investment, correct?
A In certain cases, yes.
Q HarbourVest identified several litigation matters that it

had questions about, correct?
A Correct. As we would with any investment.
Q And it went back to Highland and asked them to explain their position on those litigation matters?
A Correct.
Q And one of those litigation matters was the Joshua Terry litigation, correct?
A Yes.
Q And at the time that HarbourVest was considering this investment, beginning in the second quarter and continuing through the summer, that Josh Terry litigation had not resulted in an award or a final judgment, correct?
A Correct.
Q And I think we looked earlier at a document that your counsel admitted as HarbourVest Exhibits 34 and 35. There was an email from a HarbourVest -- or, I'm sorry, from a Highland representative to a HarbourVest representative that was discussing Highland's position on the litigation, including the Terry litigation, correct?
A Are you referring to the document that we looked at earlier?
Q I am. And I can put it on the screen if we need to.
A No. Right, I recall that, and yes, that's correct.
Q Okay. And just to be clear, that document, which stated Highland's positions on the -- and summaries of the

litigation, was issued months before the arbitration award to Josh Terry, correct?

A I don't remember the exact timing, but it was certainly during our due diligence period and prior to the arbitration award, yes.

Q Well, it seems to me that that email that you -- your counsel admitted as an exhibit was issued in August of 2017. Does that sound right to you?

A If that's what the email said, yes.

Q And if the Terry arbitration award came out in October, then you would agree with me that that is several months prior to the -- or at least two months prior to the arbitration award?

A Yes.

Q And so when HarbourVest made requests of Highland to provide information regarding its items of concern, Highland complied with those requests, correct?

A It did, correct.

Q And was there ever a time when HarbourVest requested Highland to provide information and that information was not provided?

A Our requests for information, or at least, you know, responses or color to a question, were always met either with, you know, written or verbal communication back to us, yeah.

Q And you would agree with me that, in fact, HarbourVest delayed the closing of the investment by two weeks to continue its due diligence, correct?
A Correct, related to the structural changes that were made close to closing. That's right.
Q And after conducting that due diligence, HarbourVest satisfied itself that the investment was sound?
A That the legal structure that had been put in place in connection with those proposed changes by Highland was -- was legally sound, yes, and on the back of, again, statements and misrepresentations on the part of Highland around the nature and potential impact to their ongoing CLO business and HCLOF.
MR. WILSON: Well, I'm going to object to the latter part of your response as nonresponsive.
THE COURT: Sustained.
BY MR. WILSON:
Q Now, after you conducted the due diligence, HarbourVest made the investment of $73 million on November 15th, 2017, correct?
A Correct.
Q And so I think you testified earlier that prior to that investment HarbourVest had become aware that that Josh Terry litigation had resulted in an arbitration award, correct?
A Yes.
Q But I think you've also testified that HarbourVest did

not request that Highland provide a copy of the arbitration award, correct?
A That's correct.
Q And you further testified that you were represented by outside counsel at the time, correct?
A Correct.
Q And as of Monday of this week, you had not reviewed that arbitration award; is that correct?
A That's correct.
Q Have you reviewed that arbitration award since Monday of this week?
A I have not.
Q But in any event, you testified that Highland told you about the award?
A Yes.
Q And they told you the amount of the award?
A Yes.
Q And then they told you that the award had been converted to a judgment?
A When you say the award had been converted to a judgment, can you be more specific?
Q Well, I don't know how familiar you are with the litigation process, but in this instance, that award was taken to a court and the court entered a judgment on the arbitration award. Did you -- were you aware of that?

A I don't recall the specific legal terms of judgment against it. I was award of the existence of the arbitration award and the -- and the obligation for Highland to comply with that arbitration award.

Q And HarbourVest did not make an appearance in the Acis bankruptcy, right?

A We did not.

Q But you were aware of the Acis bankruptcy, correct?

A Yes.

Q And you were kept apprised of the Acis bankruptcy by Highland individuals, correct?

A We had conversations with a couple of Highland individuals throughout the Acis bankruptcy process, yes.

Q Right. And in fact, you testified that you participated in regular conference calls with Highland regarding that bankruptcy?

A That's correct, yes.

Q And do you recall having been provided with over 40,000 documents by Highland related to the Acis bankruptcy?

A I do not recall that, no.

Q Would those documents have been provided to your outside counsel, had you received them?

A I don't know the answer to that.

Q Did the outside counsel that represented you in the due diligence continue to represent you throughout the Acis

bankruptcy?
A They did. One of the counsels did, correct.
Q And which counsel was that?
A Debevoise.
Q So was your counsel actively involved with monitoring the Acis bankruptcy?
A They were, yes, particularly after we were ultimately accused of having something to do with the original structure and -- as a result of misstatements by Highland.
Q Did your counsel attend hearings in the Acis bankruptcy?
A I don't recall.
Q Are you familiar with the PACER system?
A I am not.
Q Now, I think that HarbourVest has been described as a passive investor. You recall that description of HarbourVest in this instance?
A Yes.
Q But, in fact, HarbourVest invested substantial assets such that it owned a 49.98 percent share of HCLOF. Would you agree with that?
A That's correct.
Q And in fact, the next largest investor was CLO Holdco, which owned 49.02 percent of the shares, correct?
A That sounds right.
Q And there was an advisory board that was created pursuant

to the formation documents of this investment, correct?
A That's correct.
Q And in fact, that advisory board only had two members, and one was a representative of HarbourVest and one was a representative of CLO Holdco, correct?
A Correct.
Q And the advisor -- I'm sorry, the portfolio manager was not allowed to disregard the recommendations of the advisory board, correct?
A With respect to the limited set of items that the advisory board could opine on, that is correct.
Q All right. I want to go over a couple of the misrepresentations that HarbourVest has identified in its filings related to its claim. The first one is -- and just for the record, I'm reading from Docket No. 1057 filed on September 11, 2020, HarbourVest Response to Debtor's First Omnibus Objection.

But the first misrepresentation identified in that document says that Highland never informed HarbourVest that Highland had no intention of paying the arbitration award. And was -- was Highland obligated to pay the Josh Terry arbitration award against Acis?

MR. MORRIS: Objection to the question to the extent it calls for a legal conclusion.

THE COURT: Sustained.

MS. WEISGERBER: Join in that objection.

THE COURT: Sustained. I think --

BY MR. WILSON:

Q Your understanding was --

MR. WILSON: I'm sorry, Judge?

THE COURT: I sustained the objection as calling for a legal conclusion. So, next question.

MR. WILSON: Yes, I -- I heard that. Thank you, Your Honor.

BY MR. WILSON:

Q In your understanding, was Highland responsible for paying the arbitration award to Josh Terry?

A My understanding is on the account of the fact that Acis --

MS. WEISGERBER: Objection, Your Honor. Objection, Your Honor, same basis.

THE COURT: Sustained. It was essentially the same question.

MR. WILSON: Well, Your Honor, I didn't ask --

THE COURT: It was essentially the same question, Mr. Wilson. Move on.

MR. WILSON: Okay.

BY MR. WILSON:

Q The next misrepresentation identified by HarbourVest said that Highland did not inform HarbourVest that it undertook

the transfers to siphon assets away from Acis, LP and that such transfers would prevent Mr. Terry from collecting on the arbitration award. So the basis for that allegation would be that Highland was siphoning assets from Acis to avoid having Acis pay the arbitration award, correct?

A That -- that would be the implication, yes.

Q Okay. And then that misrepresentation continues on and says that Highland represented to HarbourVest that it was changing the portfolio manager because Acis was toxic. And do you recall that representation being made to you?

A Yes, I do.

Q And would you agree with me that whether or not Acis is toxic in the industry would be an opinion?

A I suppose it would be an opinion, but by the manager of the vehicle responsible for managing the HCLOF investment and the underlying CLOs. Yeah, we viewed the Acis name and the Highland name as synonymous, if you will. I mean, Acis was a subsidiary of Highland. For all intents and purposes, it was the same from our perspective as we made the investment into HCLOF.

Q So did HarbourVest have an independent understanding of whether or not the Acis name was toxic in the industry?

A We did not, no. We relied on Highland's views of that as manager of HCLOF.

MR. WILSON: Your Honor, just a brief housekeeping

item. Did you say that we need to be done at 1:00 o'clock?

THE COURT: Well, I said I really wanted you to be done by 1:00 o'clock because I have a 1:30 docket and a 2:00 o'clock docket and I'd rather not have to hang up 70-something people and reconnect them again at 3:00 o'clock. How close are you to being finished?

MR. WILSON: Well, --

THE COURT: This is going at a very slow pace.

MR. WILSON: Well, I apologize for that, Your Honor. I think I've got at least ten more minutes, but -- but I know we also have closing remarks. And I was just going to ask if Your Honor had a preference of --

THE COURT: Keep going.

MR. WILSON: -- of breaking now --

THE COURT: Keep -- let's --

MR. WILSON: -- or keep going? Okay.

THE COURT: Let's talk fast and try to get through. You know, even if I'm sacrificing lunch today, I don't want to inconvenience 75 people this way. So we'll just probably start our 1:30 hearing a little late and inconvenience those people.

All right. Go ahead.

MR. WILSON: All right. Thank you, Your Honor.

BY MR. WILSON:

Q Did Acis form its -- I can't recall if you answered this

question, but did Acis form its own opinion on whether or not -- I'm sorry, strike that. Did HarbourVest form its own opinion on whether or not the Acis name was toxic in the industry?

MS. WEISGERBER: Objection, --

THE WITNESS: We did not. We didn't have a basis.

THE COURT: I'm sorry, did I have an objection?

BY MR. WILSON:

Q You did not --

THE COURT: Did I have an objection?

MS. WEISGERBER: Yeah. Objection. Yes. Objection, asked and answered, Your Honor.

THE COURT: Overruled. He can answer.

BY MR. WILSON:

Q Okay. But --

A We did not.

Q Did Highland have the ability to investigate the Acis name and make its own determination of whether that name was toxic? I'm sorry, I think I'm misspeaking. HarbourVest.

A HarbourVest had the ability to do that, yes.

Q I apologize I misspoke. I meant HarbourVest. Did HarbourVest have the ability to investigate that name and determine if it was toxic?

A It was irrelevant to our investment thesis. And as I said before, Acis was a subsidiary of Highland. We viewed

them as interchangeable in the context of our investment.
Q Okay. The next misrepresentation that you refer to says that Highland indicated to HarbourVest that the dispute with Mr. Terry would have no impact on its investment activities. Would you agree with me that that is also an opinion?
A It was a statement that --
MS. WEISGERBER: Your Honor, I'm going to object to the extent these questions are seeking a legal conclusion regarding, you know, if something's an opinion or not.
THE COURT: Okay. Overruled. He can answer.
THE WITNESS: It was -- it was a statement that was made to us by Highland and represented in multiple different formats as fact. And a representation that we relied on in connection with our investment.
BY MR. WILSON:
Q And finally, the misrepresentation, the last misrepresentation identified, is that Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs. Would you agree with me that that statement is an opinion?
A On the basis that it was the core investment thesis of the -- of the investment of HCLOF. Again, whether that's legally viewed as an opinion or a fact, it was -- it was certainly the investment thesis that we made the investment predicated upon.

Q And you just testified that you thought that Acis and Highland were interchangeable from the perspective of the investment opportunity, correct?
A Correct.
Q But you also accepted Highland's recommendation because HarbourVest agreed that the change in the -- to a Highland manager made commercial sense, correct?
A We took at face value what Highland recommended because this all had to do with the structuring of an entity that they fully managed with respect to multiple underlying subsidiaries that weren't managed by Highland.
Q But would you agree that, at the time, you -- HarbourVest thought that made commercial sense?
A It did not seem unreasonable to us based on the explanation we were given.
Q Okay.

MR. WILSON: I want to refer to HarbourVest Exhibit 39.

(Pause.)

THE COURT: What are we waiting on? What are we waiting on?

MR. WILSON: I'm trying to get the document on the screen, Your Honor.

(Pause.)

THE COURT: We can't hear you. We can't hear you.

MR. WILSON: I'm sorry. I'm sorry, Your Honor. I'm speaking with my --

THE COURT: Okay.

MR. WILSON: -- co-counsel here.

THE COURT: All right.

(Pause.)

MS. WEISGERBER: Mr. Wilson, is it 39 or 38 that you're referring to?

MR. WILSON: 39. HarbourVest 9019 motion on the main -- on the Dondero file. And then there's the -- it's -- it's John -- and then there's the HarbourVest, and then the exhibits are all in one file.

MS. WEISGERBER: Mr. Wilson, I'll just note that 39 was subject to confidentiality based on HCLOF's request. HCLOF's counsel is present. I think they know it's an excerpt. But I'd just -- that for HCLOF's counsel.

MR. WILSON: Well, is there an objection to showing this document on the screen? Yes. All right. We're not going to put Document 39 on the screen.

A VOICE: Yes.

MR. WILSON: All right. Scroll down to the next page.

BY MR. WILSON:

Q This is a -- this is a document that was produced to us this week, the Highland production. It appears to be a

Highland CLO Funding, Ltd. Statement of Operations for the Year Ended 31 December 2017. Do you see at the top of that -- at the top of that document where it says total investment income of $26 million?

A I do, yes.

Q And total expenses were roughly $1.8 million?

A Yes.

Q And then net change and unrealized depreciation on investments and net realized loss on investments was $4.26 million cumulative, resulting in a net increase in net assets resulting from operations of $20.224 million. Do you agree with that?

A Yes.

Q Okay.

MR. WILSON: Go to the next one.

BY MR. WILSON:

Q And you understand that, in the course of the Acis bankruptcy, the portfolio managers for certain of the CLOs were changed by the Trustee, correct?

A Yes, around the underlying CLOs. That's -- that's my understanding, yes.

Q And, in fact, Mr. Seery testified earlier today that that occurred in the summer of 2018, correct?

MR. WILSON: Scroll.

THE WITNESS: I don't recall the timing, but that's

what he testified to.
BY MR. WILSON:
Q Well, this document is HarbourVest Exhibit 40, and this is the statement of operations for the financial year ended 31 December 2018. Here, the total investment income is only $11.1 million. Do you see that?
A I do.
Q And do you see where the expenses have increased to $13.6 million?
A I do, yes.
MR. WILSON: Okay. Scroll down some more.
BY MR. WILSON:
Q And do you see where it says net change and unrealized loss on investments of $48.47 million?
A Yes.
Q And so after Acis and Brigade took over the managements of these CLOs, we had a net decrease in net assets resulting from operations of $52.483 million in the year 2018, correct?
MS. WEISGERBER: Objection, Your Honor. Assumes a fact not in evidence.
THE COURT: Overruled. He --
MR. WILSON: Your Honor, --
THE COURT: We're just looking at this statement and testifying about it says, so I overrule the objection.
MR. WILSON: Thank you, Your Honor. Thank you, Your

Honor. I'm now going to turn to HarbourVest Exhibit 41. All right. I'll --

BY MR. WILSON:

Q Did you answer the question, Mr. Pugatch?

A No, I -- I would agree with the second part of your statement that for the year 2018 the -- the loss was $52 million. I don't -- I don't believe that jives with the first part of your statement that that was after Acis and Brigade took over. As I understand, that was in the middle of the year.

Q But in any event, Acis and Brigade had been managing this for at least six months of 2018 when that loss occurred, correct?

A They had been managing a portion of the underlying CLO portfolio held by Highland CLO Funding.

Q All right. We're now looking at Exhibit #41, which is the Draft Unaudited Statement of Comprehensive Income, 31 December 2019. Total income has now dropped to $4.664 million.

MR. WILSON: And scroll down.

BY MR. WILSON:

Q Expenditures are at $3.645 million. And then it says investment gains and losses net out to $11.493 million, a negative $11.493 million. And --

MR. WILSON: Scroll down to the --

BY MR. WILSON:

Q And so would you agree with me that in the year 2019, HCLOF showed a net loss of $10.476 million?
A Yes, that's what the financial statements say.
Q And in this year, the Acis CLOs were solely managed by Acis and Brigade, correct?
A The Acis CLOs were. Yes, correct.
Q All right.
MR. WILSON: Now, go to 42.
BY MR. WILSON:
Q Now, this is HarbourVest #42.
MR. WILSON: Go down to the next page.
BY MR. WILSON:
Q And this is the Highland CLO Funding, Ltd. Unaudited Condensed Statement of Operations for the Financial Period Ended 30 June 2020. And so this is just half a year of operations. And would you -- and this actually has a comparison between 2019 and 2020. But do you see where it says investment income has dropped from a million dollars in the first half of 2019 to $381,000 in the first half of 2020?
A Yes.
MR. WILSON: Okay. Scroll down.
BY MR. WILSON:
Q And do you see where, in the first half of 2019, total expenses were $1.85 million, and then in the first half of 2020 total expenses were $2.16 million? Do you see that?

A I do.
Q And if you go down below that, where it says Net Realized and Unrealized Gain/Loss on Investments, the first half of 2019 HCLOF lost $12 million, and in the first half of 2020 it lost $39.472 million?
MR. MORRIS: Your Honor, I'm going to object. It's John Morris for the Debtor. I'm happy to stipulate. In fact, he can offer this document into evidence. There's no foundation that Mr. Pugatch has any particularized knowledge about any of the numbers behind this. All he's asking him to do is to confirm what the document says. It says what it says. But this -- I'll object on that basis, Your Honor.
THE COURT: All right. Mr. Wilson, what about it? You're just getting him to read numbers off of these exhibits.
MR. WILSON: Well, --
THE COURT: Shall we just --
MR. WILSON: -- I understood --
THE COURT: -- by stipulation get them into evidence?
MR. WILSON: Well, --
MR. MORRIS: No objection, Your Honor.
MS. WEISGERBER: No objection.
THE COURT: All right. So these are exhibits what? We've gone through 39, 41, and I don't know what else. 40, maybe?
MR. WILSON: It was Exhibits 39, 40, 41, and 42 that

were on the HarbourVest exhibit list.

THE COURT: All right. Those will be admitted, and we've already discussed what docket entry number they appear at.

(HarbourVest's Exhibits 39 through 42 are received into evidence.)

THE COURT: All right. Anything else? You told me you had 10 more minutes about 15 minutes ago.

MR. WILSON: Well, I'm sorry if I -- I think I had said I had at least ten more minutes, and I was looking at the -- it was 10:50 [sic] and you wanted to quit at 1:00. So I do have longer than that. I'm sorry, Your Honor.

THE COURT: Well, --

MR. WILSON: But --

THE COURT: -- I feel like I'm being --

MR. WILSON: -- I'll try to proffer --

THE COURT: Okay, Mr. Wilson, let me just tell you something. I feel like I'm being disrespected now, and the parties are. We really need to pick up the pace. I've told you I've got a 1:30 docket -- with four or five matters on it, by the way. I've got a 2:00 o'clock docket. I'm starting them late. No one advised my courtroom deputy that we were going to need all day today for this, okay? So you've got five more minutes to wrap it up, and then, of course, I have to go to Mr. Draper and see if he has cross. All right? So

please don't test my patience any more. Five minutes to finish.

MR. DRAPER: Judge, I have no questions.

THE COURT: I didn't hear you, Mr. Draper. What did you say?

MR. DRAPER: I have no questions.

THE COURT: All right. Very good.

MR. WILSON: I apologize, Your Honor. I was actually trying to be respectful of your time when I informed you that I had at least ten more minutes left at 12:50, but I will try to be as expedient as I can as I finish up.

BY MR. WILSON:

Q And I don't see you on my screen.

MR. WILSON: You can take that document down.

THE WITNESS: Here.

BY MR. WILSON:

Q Mr. Pugatch, do you have an opinion as to what caused these incredible losses of value at HCLOF?

MS. WEISGERBER: Objection to the extent it calls for a legal conclusion.

THE COURT: Overruled. He can answer.

THE WITNESS: I would say that there's no one cause for the decline in value. I can point to a number of different things, including the exorbitant fees that were charged to HCLOF, including the inability to be able to re --

refinance the CLOs on the part of HCLOF, all of which stems from the actions that Highland took prior to our investment in HCLOF.

BY MR. WILSON:

Q And you've -- I think it's been referenced several times in HarbourVest's arguments that -- that the reset was a fundamental -- the inability to get a reset was a fundamental cause of the loss in value. Is that -- is that HarbourVest's position?

A That -- that is a part of the -- the cause in the declining value of the CLOs, yes.

Q And you would agree with me that a reset is fundamentally a reset of interest rates, correct?

A Of the interest rates of the liabilities of the -- the timing for repayment of those liabilities, yes.

Q Now, just say with -- for the sake of a hypothetical example. If you had a home that was valued at $5 million, or let's just say $500,000, let's make it more realistic. If you had a $500,000 home and you had a mortgage on that home at five percent interest, your inability to refinance that home at a lower interest rate would not affect the underlying value of that home, correct?

MS. WEISGERBER: Objection, Your Honor. Hypothetical. And objection to relevance as well.

THE COURT: Sustained.

MS. WEISGERBER: Calls for speculation.

THE COURT: Sustained.

BY MR. WILSON:

Q Is there any reason to believe that the change in the interest rate would have prevented the massive losses of investment value that occurred in HCLOF?

MS. WEISGERBER: Object on the same grounds.

THE COURT: Sustained.

THE WITNESS: The short -- the short answer is yes, with a -- with the amount of leverage --

MS. WEISGERBER: I --

THE WITNESS: -- that exists. Oh, sorry.

MS. WEISGERBER: The objection was sustained.

THE COURT: Yeah, I sustained the objection. That means you don't answer.

THE WITNESS: I'm sorry, Your Honor.

BY MR. WILSON:

Q So, would you agree with me that if the expenses and the fees charged by the portfolio manager increased dramatically, that would -- that would impact the value of the investment, correct?

MS. WEISGERBER: Objection on the same grounds, and relevance. This is a 9019 hearing, Your Honor. We are not here to try every minutia. And in fact, we're trying to avoid a trial on the merits. And it feels like we're getting a bit

far afield now.

THE COURT: I sustain.

MR. WILSON: All right. I'll pass the witness.

THE COURT: All right. Mr. Draper said he had no cross. So, any redirect, Ms. Weisgerber?

MS. WEISGERBER: No, Your Honor.

THE COURT: All right. Mr. Morris, did you have any redirect?

MR. MORRIS: I do not, Your Honor. I have a very brief closing and then some additional remarks if -- if we finish.

THE COURT: All right. So, Mr. Pugatch, that concludes your testimony. Thank you. You're excused if you want to be.

All right. So, as I understood it, there would be no more evidence after this.

MR. WILSON: Well, Your Honor, along those lines, as a housekeeping measure, I think everything on my exhibit list is included on someone else's exhibit list, but just for belt and suspenders I would move to admit all of the exhibits on the -- on Mr. Dondero's exhibit list.

THE COURT: Well, is that agreed or not? Because we didn't have a witness to get them in.

MR. MORRIS: No objection, Your Honor.

THE COURT: Any objection? All right. If there's no

objection, I'll --

MR. MORRIS: Your Honor, --

THE COURT: I'm sorry. Was there an objection? I will admit Dondero Exhibits A through M, and those appear at Docket Entry 1721, correct, Mr. Wilson?

MR. WILSON: That is correct, Your Honor.

THE COURT: All right.

MR. WILSON: That is correct, Your Honor.

(James Dondero's Exhibits A through M are received into evidence.)

MR. WILSON: And one final matter is, during the examination of Mr. Seery, you at least partially admitted Dondero's Exhibit N, and I was wondering if we need to -- how we'd need to submit that for the record.

THE COURT: Okay. First, I'm confused. I think you said Mr. Terry's testimony. You --

MR. WILSON: I said Seery. I'm sorry.

THE COURT: Oh, Seery?

MR. WILSON: Or I may have said Terry, but I meant to say Seery.

THE COURT: Okay. Maybe you said it. Okay. During Mr. Seery's testimony -- oh, the email that I admitted a portion of?

MR. WILSON: That is -- that's correct, Your Honor.

THE COURT: What -- what are you asking? It's not in

your notebook. Are you asking do you need to separately submit it or what?

MR. WILSON: Yeah, I was just asking what the Court's preference on how we submit that for the -- put it in the record.

THE COURT: Okay. That was so garbled I didn't hear you. You need to file that on the docket as a supplemental exhibit that was admitted, okay?

MR. WILSON: Okay. Thank you, Your Honor.

THE COURT: All right. Closing arguments? Mr. Morris?

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Yes, very briefly, Your Honor. The Debtor easily meets the standard here. The settlement consideration relative to the claim establishes and reflects the likelihood of success on the merits.

You know, I've never -- I did hear Mr. Pugatch in the deposition the other day, but I otherwise haven't heard from him. I found him to be incredibly credible, Your Honor, and I regret the fact that he and HarbourVest are being blamed twice here. The fact that they got 40,000 documents or didn't read the arbitration award, it's just -- it's a shame that they're being dragged through this yet again.

The fact is, Your Honor, there is no evidence that they made the disclosures that HarbourVest claims -- complains

about. They just don't. The fraudulent transfers led to the bankruptcy, led to the appointment of a trustee, led to -- right? So, so it's -- that's why -- but they're getting something for their claim.

It was a hard negotiation, Your Honor. There is no dispute that if we litigated this it would be complex. It would fact-intensive. The Debtor would be forced to rely upon witnesses who are no longer employed by it. That it would be expensive, for sure. There's no dispute about any of that. There's no dispute that the creditor body has spoken loudly here by unanimously refraining from objecting except for Mr. Dondero and the entities controlled by him.

And you heard Mr. Seery's testimony. I think he exhaustively informed the Court as to the process by which the transaction was analyzed and negotiated, and there's no evidence to the contrary that this was an arm's-length negotiation.

Unless Your Honor has any questions, we would request that the motion be granted.

THE COURT: Thank you. Ms. Weisgerber, your closing argument?

CLOSING ARGUMENT ON BEHALF OF HARBOURVEST

MS. WEISGERBER: Sure. Thank you, Your Honor. I'll also be brief. We again join in Mr. Morris's arguments and comments.

The Court has now heard testimony from Mr. Pugatch regarding the factual detail underlying HarbourVest's claims. The Court has also heard about the significant damages that HarbourVest stands to recover for those claims. And HarbourVest came to this Court ready to litigate. It would -- it's ready to do so if needed. It believes it would prevail on its claims if it had to do so.

But the Court also heard from Mr. Seery about his understanding of HarbourVest's claims, his calculus, and his decision to settle them. And we submit that nothing further is needed by this Court in order to approve the settlement. This is a question of the Debtor's business judgment. We're not here to have a trial on the merits of HarbourVest's claims. The Objectors have made various arguments, including about the cause of HarbourVest's damages. But even the nature of the legal claims that HarbourVest is asserting, some do not require a loss causation. So we submit that's not even relevant to the merits of the claims.

The settlement is clearly in the best interest of the estate, and we respectfully request that the Court approve it.

THE COURT: Thank you. All right. Mr. Wilson, your closing argument?

MR. LYNN: Michael Lynn. I will give the closing argument, if that's satisfactory to the Court.

THE COURT: All right. Go ahead.

CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

MR. LYNN: Good afternoon, Your Honor. I just want to make a few points, and I'll try to do it as quickly as possible.

First, I feel compelled to address the argument of the Debtor that Mr. Dondero is repeating his litigious behavior from the Acis case. I don't know about the Acis case. I wasn't involved except very, very peripherally. But with respect to this case, we have only taken positions in court that we believed -- that is, his lawyers -- believed were warranted by law, facts as we knew them, and that are consistent with professionalism. I'd be glad to explain any position we took.

Often, through the Debtor's very persuasive powers, we never had the chance to explain our position previously to the Court. In fact, for the most part, as today, we have been reactive rather than commencing proceedings. In fact, during the first seven months of this case, we only appeared in court a few times, when we felt we had to -- for example, when discovery was being sought by the Creditors' Committee that we feared might invade privilege. Then, much to the Debtor's fury, we opposed the Acis 9019. We did so because we thought it was too much.

Since, as the Court can see, the principal instigators of litigation have been the Debtor, and to a lesser extent, the

Committee.

Indeed, in an apparent effort to drown Mr. Dondero and his counsel in litigation, the Debtor has repeatedly sought court action on a very short fuse, claiming need for expedited hearing.

Perhaps the most startling example of this is the recent contempt motion, for which there is no good reason for a quick hearing. Resolution of that motion is not necessary to reach the confirmation hearing. The motion could be heard after the confirmation hearing. There is no need to put Mr. Dondero and his professionals in a position where they have to respond in a couple of days, two business days, and then will have two days to prepare for trial.

Second, Your Honor, Mr. Seery has repeatedly asserted, contrary to today's motion, that the HarbourVest claim was of no merit. That is why, when he came in to settle for tens of millions of dollars, we opposed this motion. It appears that the motion is occurring without any cross-party discovery. There is no consideration, apparently, of trying dispositive -- dispositive motions first. There is no consideration for junior classes of equity, which Mr. Seery has previously opined were in the money. This, even though there's no reason that this settlement is necessary pre-confirmation, unless Mr. Seery wants HarbourVest's vote.

Third, for whatever reason, that seems to be the driving

factor for settling. On its face, the vote seems to be a key factor of the settlement. About the longest provision of the settlement agreement relates to voting. The motion itself -- in the motion itself, five of seven bullet points cited by the Debtor for approval of the settlement deal with and emphasize support of the plan or the vote that is to be cast for the plan.

If the settlement is a good deal, it didn't need to have as one of its parts the requirement that HarbourVest vote for the plan.

Your Honor, I'll stop there. I know Your Honor would like to get just a few minutes before your 1:30 docket. I've been there and I understand that, and I do apologize for taking the time we have, but I think that responsibility is shared with the Debtor and HarbourVest.

Thank you, Your Honor.

THE COURT: All right. Thank you for that.

Mr. Draper, any closing argument from you?

CLOSING ARGUMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: Yes, I have three comments. The first is the claim -- the loss claim, absent the fraud claim, is, at best, $7 million. I think Mr. Seery's argument that a hundred -- one hundred percent is attributable to there is just wrong. If he and I both invested in a company 50-50 and it goes broke, we only lost 50 cents each.

Number two, I think the Court heard the evidence. I think this is, at best, a subordinated claim under 5 -- under the Bankruptcy Code. It's really a "But for the misrepresentations, we wouldn't have invested."

And the last one is the -- Judge Lynn represented the voting, so I won't deal with that. But the one that troubles me the most is the fact that this asset that is ultimately being paid for in claim dollars that's being transferred over to the Debtor and being put it outside the estate, outside the purview of this Court, and placed in some subsidiary, this -- this transaction, if it is approved, must -- should contain a provision that the asset that's being acquired come into the Debtor and be owned by the Debtor.

THE COURT: All right.

MR. DRAPER: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Draper.

Mr. Morris, you get the last word since it's your motion.

MR. MORRIS: Very quickly, Your Honor. The subordination argument doesn't hold water. This is not a claim against the Debtor for the security; it's a claim for fraud. Okay? So, so 510(b), if it was a claim against HCLOF, that might make sense, but this is a claim against the Debtor. And it's a Debtor -- it's a claim for fraud. That's number one.

Number two, we need to keep this exactly as it's been

structured in order to avoid litigation. Mr. Seery told the Court. I'm sure the Court can make its own assessment as to Mr. Seery's credibility as to whether or not the Debtor is intending to somehow get this asset beyond the Court.

But there are reasons why we've done this, Your Honor. They could have made an objection on that basis. In fact, if they did, it would be overruled, because there's no -- there's no basis for this Court to find that somehow the Debtor and Mr. Seery are doing something untoward to get assets away from this Court's jurisdiction.

You know, I don't know what to say about Mr. Lynn's commentary. Much of it had nothing to do with any evidence in the record.

The fact remains, Your Honor, that this settlement is fair. It's reasonable. It's in the best interest of the estate. And we would respectfully request that the Court grant the motion.

THE COURT: All right. Thank you. Well, I appreciate all the arguments and evidence I have heard today. I'm going to be brief in my ruling here, but I reserve the right to supplement in a more fulsome written order, which I'm going to instruct Mr. Morris to submit. I am approving the motion to compromise the HarbourVest claim today, and I guess subsumed in that is granting the motion to allow their claim for 3018 voting purposes.

I in all ways find this compromise to meet the required legal standard set forth in such cases as *TMT Trailer Ferry*, *AWECO*, and *Foster Mortgage*, numerous other Fifth Circuit cases.

First, I'm going to specifically say for the record that I found both witnesses today, Mr. Seery and Mr. Pugatch, to be very credible. Very credible testimony and meaningful testimony was provided to the Court today. And based on that testimony, I find, first, that this compromise was the product of arm's-length negotiations. It was a hard-fought negotiation, as far as I'm concerned. The Debtor objected to these numerous HarbourVest proofs of claim. The Debtor did not want to allow HarbourVest a significant claim for voting purposes. I duly note the statements made in the disclosure statement before this compromise was reached suggesting, you know, the Debtor didn't think HarbourVest should have a large claim.

That is consistent with everything I typically see in a bankruptcy case when there's a claim objection. The objector vehemently denies the claimant should have a proof of claim, and then people sit down and think about the risks and rewards of litigating things. And I believe very fervently that's what happened here. There were good-faith, arm's-length negotiations that resulted in this proposed compromise.

I find the compromise -- and I'll add to that point, on

the good-faith point, I find nothing sinister or improper about the fact that the compromise includes a commitment of HarbourVest to vote in favor of the plan. Again, we see this a lot. You know, there's even a buzz word that doesn't even exist in the Bankruptcy Code: "plan support agreement." You know, we see those a lot -- you know, oftentimes negotiated before the case, but sometimes after. You know, it may be improper in certain situations, but there was nothing here that troubles me about that component of the compromise.

I find the compromise to meet the paramount interest of creditors here. Notably, we have very large creditors in this case who have not objected. The *Foster Mortgage* case from the Fifth Circuit tells me I am supposed to consider support or opposition of creditors. No opposition of UBS. No opposition of the Redeemer Committee Crusader Fund. No opposition from Josh Terry or Acis. No opposition from Daugherty.

But moreover, when considering the paramount interest of creditors, I find this compromise to be in all ways fair and equitable and in the best interest of the estate, and certainly within the range of reasonableness. The evidence showed that HarbourVest asserted over $300 million. Over $300 million. Granted, that was based on all kinds of legal theories that would be contested and expensive to litigate, but the evidence also showed that they invested over $70 million. You know, close to $75 million. I forget the exact

number. $75 or $80 million, somewhere in that range. And now the credible evidence is that investment is worth about $22 million.

So, certainly, while the claim may not have, at the ultimate end of the day in litigation, resulted in a $300 million proof of claim, certainly, certainly there were strong arguments for a very sizeable claim, more than this compromise amount. So it's certainly fair and equitable and reasonable when considering the complexity and duration of further litigation, the risks and rewards, the expense, delay, and likely success.

A couple of last things I'm going to say are these. I understand, you know, there is vehement disagreement on the part of our Objectors to the notion that Highland might have caused a $50 million loss to HarbourVest. But I will tell you, for what it's worth -- I want the record clear that this is part of my evaluation of the reasonableness of the settlement -- my reaction is that, indeed, Highland's litigation strategy in the Acis case caused HCLOF to lose a huge portion of its value, to the detriment of HarbourVest. You know, whether all evidence at the end of the day would convince me of that, I don't know, but that's -- that is definitely this judge's impression.

I'm very sympathetic to HarbourVest. It appears in all ways from the record, not just the record before me today, but

the record in the Acis case that I presided over, that Highland back then would have rather spent HarbourVest's investment for HCLOF legal fees than let Josh Terry get paid on his judgment. They were perfectly happy to direct the spending of other people's money, is what the record suggested to me.

And then, you know, I have alluded to this very recently, as recently as last Friday: I can still remember Mr. Ellington sitting on the witness stand over here to my left and telling the Court, telling the parties under oath, that HarbourVest -- he didn't use its name back then, okay? For the first phase of the Acis case, or most of the Acis case, we were told it was an investor from Boston. And at some point someone even said their name begins with H. I mean, it seemed almost humorous. But Mr. Ellington said it was they, HarbourVest, the undisclosed investor, who was insistent that the Acis name was toxic, and so that's what all of this had been about: the rebranding, the wanting to extract or move things away from Acis.

So, you know, I have heard for the -- well, at least the second time today, from Mr. Pugatch, what I perceive to be very credible testimony that that's just not the way it happened.

And I guess the last thing I want to say here today, and you know, I guess I have multiple reasons for saying this, not

just in connection with approving the settlement, you know, I've heard about how the Acis CLOs, the HCLOF CLOs have lost, you know, a crazy amount of value, that they underperform in the market, that, you know, during the Acis/Brigade tenure and, you know, they should have been reset. You know, I hope those who have not been around as long as some of us in this whole saga know that the -- Mr. Terry, Mr. Phelan, I think Brigade, they all desperately wanted to reset these things, but it was HCLOF, I believe directed by Highland, that wanted to redeem, wanted to liquidate, take the pot of money, warehouse it, and then do their own thing.

And there was, I think, from my vantage point, a monumental effort to try to get everyone to the table to do reasonable resets that would be good for the stakeholders at HCLOF and be good for the creditors of Acis, including Josh Terry. That was always the balancing act that most of us were focused on during the Acis bankruptcy. But Highland, I believe, directing HCLOF's strategy, just did not want the resets to happen.

So, again, part of me, I suppose, just wants to make the record clear on something that I fear not everyone is clear about. And I say that because the comment was made that the injunctions, the preliminary injunctions sought by the Acis trustee caused the plummet in value, and I think that's just not an accurate statement. I think litigation strategies are

what caused the plummet in value, and that's why I think ultimately HarbourVest would potentially have a meritorious claim here in a significant amount if this litigation were to go forward.

So, I approve this under 9019. And again, Mr. Morris, you'll upload an order.

It is now 1:41, so let's as quickly as possible hear the other motion that I don't think had any objections. Mr. Morris?

MR. MORRIS: Your Honor, just -- yes, just very quickly, just four things.

With respect to the order, I just want to make it clear that we are going to include a provision that specifically authorizes the Debtor to engage in -- to receive from HarbourVest the asset, you know, the HCLOF interest, and that that's consistent with its obligations under the agreement.

The objection has been withdrawn, I think the evidence is what it is, and we want to make sure that nobody thinks that they're going to go to a different court somehow to challenge the transfer. So I just want to put the Court on notice and everybody on notice that we are going to put in a specific finding as to that.

THE COURT: All right. Fair --

MR. MORRIS: Number two is --

THE COURT: Fair enough. I do specifically approve

that mechanism and find it is appropriate and supported by the underlying agreements.

And just so you know, I spent some time noodling this yesterday before I knew it was going to be settled, so I'm not just casually doing that. I think it's fine.

Okay. Next?

MR. MORRIS: Thank you very much, Your Honor. Number two, with respect to the motion to pay, there is no objection. If we can just submit an order. Or if Your Honor has other guidance for us, we're happy to take it.

THE COURT: Okay. Does anyone have anything they want to say about that motion?

Again, I looked at it. I didn't see any objections. I didn't see any problem with it. It's -- you know, you're going through this exercise because of the earlier protocol order.

MR. MORRIS: Correct.

THE COURT: All right. Well, if there's nothing, then, I will approve that, finding there is good cause to grant that motion.

MR. MORRIS: Okay.

THE COURT: All right. Is the only other housekeeping matter --

MR. MORRIS: I --

THE COURT: -- we have the contempt motion?

MR. MORRIS: It is, and I do -- I do have to point out how troubled the Debtor is to learn that Mr. Dondero was still receiving documents from Highland as late as this morning. It's got to be a violation of both the TRO -- I guess it's now the preliminary injunction.

I would respectfully request -- I know that time is what it is -- but maybe Mr. Dondero can answer now where he got the document, who he got the document from, what other documents he's gotten from the Debtor since Your Honor ordered him not to communicate with the Debtor's employees.

This is not saying hello in the hallway. I mean, this is just -- it is really troubling, Your Honor, and it's why we need the contempt motion heard as soon as possible.

THE COURT: Well, Mr. Wilson, do you want to address that? I think the words I heard were that you just got the document this morning, and you got it from Mr. Dondero, but we don't know where and when Mr. Dondero got it. Mr. Wilson, are you there?

MR. LYNN: I'm afraid I'm back, Your Honor.

THE COURT: Okay.

MR. LYNN: I am not sure whether Mr. Dondero had it in his files from some -- from back before he was asked not to communicate with members or with employees of the Debtor. I believe -- I believe he's with us, though I don't think he's available by video.

Are you there, Mr. Dondero?

THE COURT: We can't hear you, Mr. Dondero.

MR. DONDERO: Judge?

THE COURT: Oh, go ahead.

MR. DONDERO: Can you hear me now?

THE COURT: Yes.

MR. DONDERO: Yes, I -- I -- when I moved offices, I found it in a stack of paper, and --

MR. LYNN: I understand it shows that his microphone is working.

THE COURT: Okay. Go ahead.

MR. DONDERO: Can you hear me?

THE COURT: Yes, go ahead.

MR. DONDERO: Yeah, I -- I'm sitting in new offices. I've got everything in boxes. I was going through everything yesterday, and I found those emails in a stack of papers and I sent them over because I thought they would be relevant relative to Seery's initial impression.

THE COURT: Okay. Well, let's talk about the timing of this hearing. Mr. Morris, I'm going to -- I'm going to ask you why --

MR. LYNN: Michael Lynn, Your Honor. I don't want to waste the Court's time. We have not made available anything to the Court objecting to the expedited hearing on the contempt motion. We've been here.

I would say to Your Honor that if Mr. Dondero is indeed in contempt, or was in contempt toward the motion, which has nothing to do with the document that was presented as Dondero Exhibit N, there is no need to hear this on an expedited basis.

Every time we turn around, Your Honor, the Debtor is asking that something be heard on an expedited basis. And we have not opposed that. We have not fought that, to speak of, to date. But this is getting a little ridiculous. We're within days of confirmation of the Debtor's plan, and it is simply a means of causing pain and suffering to Mr. Dondero and those who are working with him and for him. And he does have employees at NexPoint who are assisting him.

So we most strongly object to being put on a schedule where we are expected to get a response to the contempt motion on file by Monday, today being Thursday, and a weekend intervening. And we strongly object to any setting of this contempt motion on Tuesday or Wednesday. It is absurd, and it is done solely, solely, Your Honor, to cause pain.

THE COURT: All right.

MR. MORRIS: Your Honor, if I may?

THE COURT: Please.

MR. MORRIS: Just very briefly, we had a hearing the other day. The evidence is the exact same. The evidence is crystal clear that the violations are meaningful, they're

substantial, and they are repeated.

After the TRO was entered into, Mr. Dondero and only Mr. Dondero chose to interfere with the Debtor's business. Mr. Dondero and only Mr. Dondero chose to communicate with the Debtor's employees, not about saying hello in the hallway but about coordinating a legal defense strategy against the Debtor.

The need is immediate, Your Honor, and I would respectfully request that the hearing be set for Tuesday or Wednesday. They've had this motion now since the 7th of January. They had a full evidentiary hearing, so they know most of the evidence that's going to be presented. They have a whole team of -- they have an army of lawyers, Your Honor, and half a dozen firms working on behalf of Mr. Dondero and his interests. For him to cry here, for him to cry that this is too much is really -- it's obscene. It just is.

THE COURT: All right. I'm going to say a couple --

MR. LYNN: That is absurd.

THE COURT: I'm going to say a couple of things. One is that I -- well, the one time I remember getting reversed for holding someone in contempt of court, the District Court felt like I had not given enough notice of that. The District Courts, what they think is reasonable notice, is sometimes very different from what the bankruptcy judges think. We're used to going very lickety-split fast in the bankruptcy

courts. And the Courts of Appeals, District Court, Courts of Appeals obviously, for good reason, are very concerned about due process in this kind of context. So I'm sensitive to that.

I'm also sensitive to the fact that it is monetary damages that are being sought here to purge the contempt. Okay? The shifting of attorneys' fees is basically what I understand is being sought at this point. You know, we have a preliminary injunction halting behavior at this point, and so I think that's another reason I'm hesitant to give an emergency hearing. I feel like monetary damages can wait and we can give 21-plus days' notice of the hearing.

But I'm going to throw this out there as well. If I do feel like there is a showing of contempt, if I do feel like the phone -- as I told you the other day, I'm very, very fixated on the phone that may have been destroyed or thrown away, maybe at Mr. Dondero's suggestion. I mean, the potential monetary sanction here may be very, very large if the evidence plays out in the way I fear it might play out. So I need to make sure everybody has adequate time to prepare for that hearing and make sure I get all the evidence I need to see. All right? Contempt of court is very, very, very, very serious, and I don't think anyone would deny that.

So, with that, it was filed what day? January 4th? Is that what I heard? Or --

MR. MORRIS: January 7th, I believe, Your Honor.

THE COURT: January 7th? All right. Well, Traci, are you there? Hopefully, you're not in a hunger coma at this point.

THE CLERK: I am here.

THE COURT: Okay. We have -- we're going to have to go to that first week of February, right? Because we've got the confirmation hearing that, you know, late in January, and then --

THE CLERK: Yes. Uh-huh.

THE COURT: Okay. Do you have an available date to give right now?

THE CLERK: How about -- if you're willing to hear them on Friday, February 5th.

THE COURT: Okay. I can do that. February 5th at 9:30. Any -- anybody want to argue about that?

MR. MORRIS: Thank you, Your Honor. That's acceptable to the Debtor.

THE COURT: Okay. Mr. Lynn, is that good with you?

MR. LYNN: We'll do that, Your Honor. I would say, by the way, that I'll be happy to buy Mr. Seery, out of my own pocket, five cell phones, which ought to make up for the one that was lost, though I recognize that those cell phones will not have on them the privileged information, the conversations between his lawyers and Mr. Dondero that I imagine he was

looking forward to seeing.

THE COURT: Well, I wouldn't want him to see that information, but I do think he's entitled to any nonprivileged information, texting, or calls that are on that phone. So, again, I'm either going to hear good explanations for that or not, but it's something very concerning to me.

All right. So we have a game plan.

I'm going to ask, Did we have good-faith negotiations between Dondero and the Committee and anything positive to report? I'll ask Mr. Lynn and Mr. Clemente to weigh in.

MR. CLEMENTE: Yes, Your Honor. I'll go first, Your Honor. Mr. Lynn and I have exchanged several emails over the weekend, and the message that I sent to Mr. Lynn was very clear. There had been a term sheet that Mr. Seery had sent back to Mr. Dondero. I had asked Mr. Lynn to take a pencil out and be very specific as to what it was Mr. Dondero was prepared to do in connection with the pot plan. I instructed him that some of the issues that the Committee still has is obviously the overall value, along with the concept that's signing up to a promise from Mr. Dondero to comply with (indiscernible) as part of that value. As Your Honor may understand, the Committee is obviously very skeptical of Mr. Dondero's future performance under an agreement that he enters into.

Those are but a couple of issues, Your Honor, that I

advised Mr. Lynn were very concerning to the Committee. And I suggested to him that if he wanted to move things forward, the best way to do it would be to come to us with a fulsome term sheet that explained exactly what it was in clear and precise detail that Mr. Dondero was proposing, and that would be the best way to move the process forward, Your Honor.

THE COURT: All right. Mr. Lynn, anything to add to that?

MR. LYNN: Well, Your Honor, my experience in negotiations is that it is useful to agree on substantive terms, or at least be in the ballpark, before term sheets are exchanged. Long ago, a term sheet was prepared and presented to the Committee. Ultimately, I think it was rejected, though I don't know if we ever received a formal rejection.

I explained in my emails, which I'm happy to share with the Court if Your Honor wants to see them, why I was reluctant to try to put into a term sheet form the proposal that I suggested to Mr. Clemente. As I said, I'm more than happy to provide you with that email chain and let you form your own judgment, Your Honor, as to whether we're proceeding in good faith.

THE COURT: All right. Well I'm not going to ask --

MR. POMERANTZ: Your Honor? Your Honor, this is Jeff Pomerantz.

THE COURT: -- to see any of that. Mr. Pomerantz?

MR. POMERANTZ: May I just be heard real quickly?

THE COURT: Sure.

MR. POMERANTZ: Your Honor, we also took Your Honor's comments to heart. We, Mr. Seery and I, had an over-an-hour conversation with Mr. Lynn and with Mr. Bonds. We provided them with our thoughts as to what they needed to do in order to move forward. Of course, it's not really the Debtor to agree. It's the creditors to agree. But as Mr. Seery has testified many times before and as I have told the Court, we would support a plan that the Committee and Mr. Dondero could get behind.

So we again -- I'm not going to divulge the nature of those communications, but we suggested several things that Mr. Dondero could do in order to move the ball forward, and unfortunately, we have not seen any of those things done thus far. So we are, at this point, not optimistic that there will be a grand bargain plan.

THE COURT: All right.

MR. DONDERO: Your Honor, could I comment for a second? This is Mr. Dondero.

THE COURT: If you and your counsel want you to comment, you can comment.

MR. DONDERO: I'd love to do a pot plan. I would love to reach some kind of settlement and everybody move on with their lives. The estate started with $360 million of

third-party assets and $90 million of notes. The $360 million of third-party assets are down to $130 million.

MR. POMERANTZ: Again, Your Honor, I must interrupt. I did this at the last hearing, and it's not my practice to interrupt, but issues regarding what the value is or not, it's going to require a response, and that's not really before Your Honor. I think before Your Honor is --

MR. DONDERO: Okay.

MR. POMERANTZ: -- have there been negotiations? Have they been in good faith? If Mr. Dondero wanted to address that, that's fine, but I object to having any discussion at this point, especially with Mr. Dondero not even under oath, on what the nature of the value of the assets and why they have changed and what not.

THE COURT: Well, --

MR. POMERANTZ: It's just not appropriate.

THE COURT: I understand --

MR. DONDERO: Okay. Can I --

THE COURT: Stop.

MR. DONDERO: Can I -- can I finish?

THE COURT: Let me please respond to that. I understand your concern, but I've heard from Mr. Seery testimony many months ago about the value plummeting during the case. And I asked why, and I got some explanations. This is not evidence. This is just, you know, this is not going to

be binding in any way. Mr. Dondero can speak as to what he thinks, you know, the situation is.

Go ahead, Mr. Dondero.

MR. DONDERO: Okay. I'm not trying to fixate on the numbers. And as far as the third-party assets are, we would be willing to pay -- I would be willing to pay for those. I'd be willing to pay more, and even some value for the affiliate notes that were really part of compensation agreements throughout the history of Highland and avoid the POC arguments. I'd be willing to pay for the assets and I'd be willing to pay even more than that.

I have no transparency in terms of what the assets are, and there's no fulsome discussion in terms of, well, here are the assets, here are the notes, here's what we think the values are, can you get to this number? It's just a -- you -- the -- it -- I don't view there is good-faith negotiations going on because it's always just a: You need to put a big number on a piece of paper; otherwise, you're going to get run over.

And there's no back and forth going on, but it's not due to a lack of willingness on my part. And maybe there needs to be a committee set up. Maybe there needs to be, I don't know, a mediator or an examiner or somebody to try and push through the pot plan, but there's nothing happening. People are not returning the judge's calls, I mean, Mr. Lynn's calls, or my

calls. They're -- there's -- despite efforts of our -- of my own and a willingness of my own, there's no negotiations of any sort going on at the moment.

THE COURT: All right. I don't want anyone to respond to that. I know people have different views of what's going on. But let me just say a couple of things, and then we're done.

We do have a Committee in this case. We have a Committee with very sophisticated members and very sophisticated professionals. Okay? That's who I wanted you to be talking to before the end of the day Tuesday.

We have had co-mediators in this case. Okay? And, you know, I identified very sophisticated human beings for that role. Okay? And in fact, there ended up being settlements that flowed out of the co-mediator process.

We're now 15 months into the case. There are major, significant compromises now: HarbourVest, UBS, Acis, Terry, and Redeemer Committee. I hate to use a worn-out metaphor, but the train is leaving the station. We've got confirmation. I've pushed out two weeks. I mean, you all are either going to get there in the next few days or we're just going to go forward with I think what everyone, you know, would rather be a pot plan, but if we can't get there, we're just going to have to consider the plan that's on the table now. Okay?

You know, the Committee, again, they're sophisticated.

They can compare apples to oranges and decide whether the plan on the table, with its risks of future litigation and recoveries, whether it's better or worse than whatever consideration you're offering, Mr. Dondero.

And you know, as we all know, there is distrust here, there, and everywhere among these parties. So I can totally understand them, you know, taking a hard line: We either get all cash or we're just not going to mess with it. We don't want to risk broken promises. We'd rather just do litigation.

So, anyway, that's as much as I'm going to say except I am going to further direct good-faith negotiations. It sounds like to me a written term sheet might be the appropriate next step, given where I've heard things are at the moment. But, you know, I guess we don't have any hearings between now and the 26th, right? No Highland hearings that I can think of between now and the 26th.

MR. POMERANTZ: I don't think so.

MR. MORRIS: I think that's correct, Your Honor.

THE COURT: So you have all this time --

MR. MORRIS: At the moment.

THE COURT: You have all this time to negotiate and simultaneously get ready for the confirmation hearing without any other battles. So I know you will use the time well.

All right. We're adjourned.

THE CLERK: All rise.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 2:04 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 **01/16/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

INDEX
Page 2

EXHIBIT 68

GRANT SCOTT - 1/21/2021

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

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P. Debtor.	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; NEXPOINT ADVISORS, L.P.; HIGHLAND INCOME FUND; NEXPOINT STRATEGIC OPPORTUNITIES FUND; NEXPOINT CAPITAL, INC.; and CLO HoldCo, LTD., Defendants.	Adversary Proceeding No. 21-03000-sgj

VIDEOCONFERENCE DEPOSITION OF Grant SCOTT

Thursday, 21st of January, 2021

Reported by: Lisa A. Wheeler, RPR, CRR

Job No: 188910

GRANT SCOTT - 1/21/2021

January 21, 2021

2:02 p.m.

Videoconference deposition of Grant SCOTT, pursuant to the Federal Rules of Civil Procedure before Lisa A. Wheeler, RPR, CRR, a Notary Public of the State of North Carolina. The court reporter reported the proceeding remotely and the witness was present via videoconference.

GRANT SCOTT - 1/21/2021

REMOTE APPEARANCES:

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GRANT SCOTT - 1/21/2021

REMOTE APPEARANCES: (Continued)

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GRANT SCOTT - 1/21/2021

REMOTE APPEARANCES: (Continued)

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BY: BRIAN CLARK, ESQ.
JOHN KANE, ESQ.

ALSO PRESENT: La Asia Canty

G R A N T S C O T T,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

MR. MORRIS: Good afternoon. My name is John Morris. I'm an attorney with Pachulski Stang Ziehl & Jones, a law firm who represents the debtor in the bankruptcy known as In Re: Highland Capital Management, L.P., and we're here today for the deposition of Grant Scott.

Before I begin, I would just like to have confirmation on the record that everybody here who's representing their respective parties agrees that this deposition can be used in evidence in any subsequent hearing, notwithstanding the fact that it's being conducted remotely, and that the witness is not in the same room as the court reporter.

Does anybody have an objection to the admissibility of the transcript subject to any reservation of -- of actual objections on the record to using this

transcript going forward?

Okay. Nobody's spoken up, so I -- I'd like to begin.

EXAMINATION

BY MR. MORRIS:

Q. Good afternoon, Mr. Scott. As I mentioned, my name is John Morris, and we're here for your deposition today. Have you ever been deposed before?

A. On two occasions.

Q. And -- and when did the -- when did those depositions take place?

A. This past October and maybe six to eight years ago.

Q. Okay. Can you just tell me generally what the subject matter was of the deposition this past October.

A. It was relating to Jim Dondero's -- it was a family law issue in -- in -- with respect to Jim Dondero.

Q. Okay. And did you testify in a courtroom, or was it a deposition like this?

A. I -- right here, actually.

Q. Okay. Super. And -- and what about

the -- the deposition six to eight years ago, do you have a recollection as to what that was about?

A. Yeah. It was a -- it was a patent I wrote for Samsung Electronics.

Q. Okay.

A. And as being the person that I -- that wrote it and the patent was in litigation, not -- not being handled by me, but by virtue of having written the patent, I was -- I was deposed --

Q. Okay. So you --

A. -- on the -- on the patent.

Q. Okay. So you've had a little bit of experience with depositions. But just generally speaking, I'm going to ask you a series of questions. It's very important that you allow me to finish my question before you begin your answer.

Is that fair?

A. Absolutely.

Q. And I will certainly try to extend the same courtesy to you, but if I -- if I step on your words, will you let me know that?

A. Okay.

Q. And if there's anything that I ask that you don't understand, will you let me know that as well?

A. Yes. I'll try -- I'll do my best.

Q. Okay. So this is a virtual deposition. We're not in the same room. I am going to be showing you documents today. The documents will be put up on the screen. This isn't a -- a trick of any kind. If at any time you see a document up on the screen and either you believe or you have any reason to want to read other portions of the document, will you let me know that?

A. Yes, I -- yes, I will. Uh-huh.

Q. With respect to the Dondero family matter, I really don't want to go into the substance of that, but I do want to know whether you testified voluntarily in that matter or whether you -- whether you testified pursuant to subpoena.

A. I would have done that, but the first time I found out about it was a -- was a subpoena that I received. I wasn't given the

choice.
Q. Okay. And do you recall who served the subpoena on you? Actually, let me ask a different question because I'm really not interested in the -- in the details.
Did Mr. Dondero serve that subpoena on you or did somebody else?
A. His counsel for his ex-wife.
Q. Mr. -- so -- so the lawyer acting on behalf of Mr. Dondero's ex-wife served you with the subpoena?
A. Correct.
Q. Okay. You're familiar with an entity called CLO HoldCo Limited; is that right?
A. Yes.
Q. Do you know what that entity is?
A. Yes.
Q. What -- what -- can you describe for me what CLO HoldCo Limited is.
A. It's a holding company of assets including collateralized loan obligation-type assets. That's a portion of the overall portfolio. It's an organization that is

integrated with other entities as part of a charitable -- loosely what we -- what we refer to as a charitable foundation equivalent. Yeah.
Q. All right. We'll -- we'll get into some detail about the corporate structure in a moment. Do you personally play any role at CLO HoldCo Limited?
A. Yes. My technical title is director, but I -- I don't necessarily know specifically what that title means other than I act, as I understand it, as -- as a trustee for those -- for those assets.
Q. And where did you get that understanding?
A. Approximately ten years ago from the group that -- that set up the hierarchy.
Q. And which group set up the hierarchy?
A. Employees at Jim Don- -- as I understand it, employees of Highland along with outside counsel, as I understand it, and also, I guess, input from -- from Jim Dondero.
Q. At the time that you assumed the

role of director of CLO HoldCo Limited, was that entity already in existence?
A. I believe so. I'm not certain. I'm not certain.
Q. What are your duties and responsibilities as a director of CLO HoldCo Limited?
A. Well, my day-to-day responsibilities are to interface with -- with the manager of the -- of the assets of CLO. I do have some role in -- with respect to some of the entities that are -- I -- I have a limited role with respect to a subset of the charitable foundations that receive money from the CLO HoldCo structure, which is commonly referred to as the DAF. There's -- sometimes those are used interchangeably.
Q. What terms are used interchangeably?
A. Well, the DAF and CLO HoldCo are frequently -- by -- by other people they're -- it's the short -- it's the -- I guess it's easier to use the acronym DAF than CLO HoldCo Limited, so I'm frequently having to -- there is a DAF entity so -- that's above -- above CLO

in terms of the management, and so it's frequently confusing and I'm having to clarify at times which entity we're talking about, but -- but other parties frequently use those terms interchangeably.
Q. Okay.
MR. MORRIS: Lisa, when we use the phrase DAF, because you'll hear that a lot, it's all caps, D-A-F.
BY MR. MORRIS:
Q. You mentioned that you interface with the manager of assets of CLOs. Do I have that right?
A. Well, of all the assets.
Q. Okay. Who is the manager of the assets that you're referring to?
A. Highland Capital Management.
Q. Highland Capital Management manages all of the assets -- withdrawn.
Is it your understanding that Highland Capital Management manages all the assets that are owned by CLO HoldCo Limited?
A. Yes.
Q. Who makes the investment decisions

on behalf of CLO HoldCo Limited?
A. Highland -- those managers that you mentioned.
Q. Okay. I didn't mention anybody in particular.
A. Oh, I'm sorry. The -- the -- the money manager -- could you repeat that question? I'm sorry. I'm so sorry.
Q. Can you just -- can you just identify for me the person who makes investment decisions on behalf of CLO HoldCo Limited.
A. It's -- well, it's -- it's persons as I understand it. I inter- -- interface with a -- with a group, but it's -- it's Highland Capital employee -- Highland Capital Management employees.
Q. Okay. Can you just name any of them, please.
A. Hunter Covitz, Jim Dondero. Mark Okada's no longer there, but I believe he was involved, and there are others that I interface with.
Q. Can you -- can you recall the name of anybody other than Mr. Okada and Mr. Dondero

and Mr. Covitz?
A. Yeah. Over the years I've worked with Tim Cournoyer, Thomas Surgent, but I think -- I think that's the core -- the core group.
Q. All right. And is there anybody within that core group who has the final decision-making authority concerning the investments in CLO HoldCo Limited?
A. I don't -- I don't know. I'm sorry. Say that again. I just want to -- I'm sorry. I'm trying to be -- I'm not trying to -- I'm trying to be --
Q. I understand. And --
A. Sorry. If you could just repeat it.
Q. Sure. Is there any particular person who has the final decision-making authority for investments that are being made on behalf of CLO HoldCo Limited?
A. Amongst that group I am -- I am not sure.
Q. Okay. So are there any other directors of CLO HoldCo besides yourself?
A. No.

Q. Is it fair to say that you do not make decisions, investment decisions, on behalf of CLO HoldCo Limited?
A. Yes.
Q. Does CLO HoldCo Limited have any employees that you know of?
A. No.
Q. Does CLO HoldCo have any -- withdrawn.
Does CLO HoldCo Limited have any officers that you know of?
A. No.
Q. So am I correct that you're the only representative in the world of CLO HoldCo in terms of being a director, officer, or employee?
A. Yes.
Q. Do you receive any compensation from CLO HoldCo for your services as the director?
A. I do now.
Q. When did that begin?
A. I believe in the middle of 2012.
Q. Okay. And had you served as a director prior to that time without

compensation?
A. Yes.
Q. And have you been the sole director of CLO HoldCo Limited since the time of your appointment approximately ten years ago?
A. Yes.
Q. Nobody else has served in that capacity; is that right?
A. That is correct.
Q. There have been no employees or officers of that entity during the time that you've served as director, correct?
A. Yes.
Q. Do you know who formed CLO HoldCo Limited?
A. I do not.
Q. Do you know why CLO HoldCo Limited was formed?
A. I believe so.
Q. Can you explain to me why -- your understanding as to why CLO HoldCo was formed.
A. So as I understand things, Jim Dondero wanted to create a charitable foundation-like entity or entities, and tax

people particularly, I guess, finance people, lawyers, they created this network of entities to carry out that charitable goal. At one point, I thought it was a novel type of institution, if you want to call it, or a novel -- novel type of group of entities, but over time, I came to understand that although not cookie cutter, it -- it follows a general arrangement of entities for legal and tax purposes, compliance purposes, IRS purposes, various insulating purposes to maintain -- or to meet the necessary requisites to carry out that charitable function.

Q. When did you come to that understanding?

A. Over the last couple of years. I periodically have to refresh my recollection. It's -- it's fairly complex.

Q. Okay. In your capacity as the sole director of CLO HoldCo Limited, do you report to anybody?

A. No.

Q. Other than interfacing with the manager of the assets of the CLO, do you have

any other duties and responsibilities as a director of CLO HoldCo Limited?

A. Yes. Sorry. My mouth is a little dry.

Q. By the way, if you ever need to take a break, just let me know.

A. Okay. Thank you. Now I forgot your question. The -- the -- the --

Q. I understand.

A. The answer -- the -- the answer is yes. I -- why don't you ask -- ask your question again. I'm sorry.

Q. Sure. Other than interfacing with the manager of the assets of the CLO, do you have any other duties and responsibilities as the sole director of CLO HoldCo Limited?

A. Yes. So Highland Capital because of its -- the way it's set up to manage or service CLO HoldCo and the DAF, it has a relatively large group of people that I have to interface with to do everything from -- everything from soup to nuts. Finances and the money management is one aspect, but most of my time -- on a day-to-day or week-to-week basis,

most of my time is spent working with the various compliance and other people for addressing issues of get- -- you know, getting taxes filed. It runs -- it runs the gamut of every aspect of the organization being -- being handled by Highland.

Q. Okay.

A. You know, unlike -- unlike my financial -- unlike a financial planner that might, you know, manage assets, they -- they do it all, and I interface with them regularly to maintain -- mostly to deal with compliance issues.

Q. Who's the com- -- is there a person who's in charge of compliance?

A. I believe Thomas Surgent. I mentioned him. I believe he also has that role, but it's -- you know, they do have turnover, I guess, in that. It's -- I guess they refer to it as the back office. I've heard that term be used, but -- basically, it's a large number of people that have changed over time, but it's -- it's more -- I believe it's more than one collectively.

Q. How much time do you devote -- you know, can you estimate either on a weekly or a monthly basis how many -- how much time do you devote to serving as the director of CLO HoldCo Limited?

A. I thought about that. Well, let -- let's put it this way: There was the prebankruptcy time I spent per day, and then there was the postbankruptcy time I've spent per -- per -- or per week -- excuse me, or per -- I've estimated it as probably a day -- it's so intermittent it's -- it's hard, okay? It's -- I don't dedicate my Mondays to only doing that and then Tuesday through Friday I don't, right? I -- it's -- I have to piece together everything that occurs during the week. There might be some weeks where I don't have any contact. There might be every day of the week I have multiple contact. There may be days where from morning to night there is so much contact, it precludes me from doing anything else meaningfully. So -- but I would estimate it's probably three or four -- maybe three days, four days a month when things are

going well.
Q. And -- and I think you -- you testified just now that there was kind of a difference between prebankruptcy and postbankruptcy. Do I have that right?
A. Yes.
Q. And can you tell me -- is it fair to say that before the bankruptcy, you didn't devote much time to CLO HoldCo, or do I have that wrong?
A. Well, I -- just the time that -- that I mentioned just -- I'm sorry. The -- the time I just mentioned now when you asked me, that was the pre period. Excuse me. I haven't talked about the postbankruptcy period.
Q. So are you -- are you -- are you devoting more time or less time since the bankruptcy?
A. Much more.
Q. Much more since the bankruptcy filing?
A. Yes.
Q. And so why did the bankruptcy filing cause you to spend more time as a director of

CLO HoldCo Limited?
A. Well, initially, and this would be -- this would be late 2019, it was -- aft- -- after the bankruptcy was -- was filed and I obtained counsel, who are on the phone now -- or in this deposition now, excuse me, that was -- that transition occurred because CLO was a debtor -- excuse me, a creditor to -- to the debtor and had to take steps to establish its -- its claim. So if I understand the -- things correctly, the -- the debtor identified as part of the filing -- I don't know how bankruptcy works, but if I under- -- if my recollection is correct, there's a hierarchy from biggest to smallest, and we were relatively high up. And when I say we or I, I -- I just mean CLO was relatively high up. And so initially, for the first period of so many months, the -- the exclusive focus was on our position as a creditor -- a creditor having a certain claim against a debtor.
Q. Can you describe for me your understanding of the nature of the claim against the debtor.

A. It was various obligations that were owed to -- to CLO, things that had been previously donated or -- or agreements that had been set up that transferred certain assets, and it was basically the -- the -- the amounts were derived from those sorts of transactions.
Q. Okay. You're a patent lawyer; is that right?
A. I -- I'm exclusively a patent attorney, yes.
Q. Have you been a patent lawyer on an exclusive basis since the time you graduated from law school?
A. From law school, yes.
Q. Can you just describe for me generally your educational background.
A. So I'm an electrical engineer by training. I graduated from the University of Virginia in 1984. I then went to graduate school at the University of Illinois. I received my master's degree in 1986, and then I immediately joined IBM Research at the Thomas Watson Institute in New York where I was a -- my title was research scientist, but I was -- I

guess I was more of a research engineer, if that matters. And I did that until I transitioned -- or I began law school in the fall of 1988, and then I graduated law school in May of 1991.
Q. And where did you go to law school?
A. University of North Carolina.
Q. Do you have any formal training in investing or finance?
A. I do not.
Q. Do you hold yourself out as an expert in any field of investment?
A. None -- none at all.
Q. Have you had any formal training with respect to compliance issues? You mentioned compliance issues earlier.
A. No.
Q. Now, do you have any knowledge about compliance rules or regulations?
A. Minimal that I've -- that have occurred organically but -- but generally, no.
Q. You don't hold yourself out as an expert in com- -- in the area of compliance, correct?

A. No. No. I'm -- no.
Q. Do you have any particular investment philosophy or strategy?
MR. CLARK: I'm going to object to the form of the question. And, John, can -- can we get an agreement that -- I know you were objecting just simply on the form basis yesterday -- that objection to form is sufficient today?
MR. MORRIS: Sure.
MR. CLARK: Okay. And I object to form. Grant, you can answer to the extent you can.
THE WITNESS: I forget the question now that you interrupted. I'm sorry.
BY MR. MORRIS:
Q. So -- so -- and I'm going to ask a different question because in hindsight, that's a good objection.
In your capacity as the director of -- withdrawn.
Do the employees of Highland that you identified earlier, do they make investment decisions on behalf of CLO HoldCo Limited

without your prior knowledge on occasion?
A. On occasion, they do.
Q. So there's no rule that your prior approval is needed before investments are made, right?
A. I don't know whether they have an internal guideline as to the amount that triggers when they get in touch with me or whether it's a new -- a change, something new, or -- versus recurring. So I don't -- I don't know what they use internally for that metric.
Q. Okay. Are you aware of any guideline that was ever used by the Highland employees whereby they were required to obtain your consent prior to effectuating transactions on behalf of CLO HoldCo Limited?
A. I understand there was one or more, but I do not know that.
Q. Okay. Did you ever see such a policy or list of rules that would require your prior consent before the Highland employees effectuated transactions on behalf of CLO HoldCo Limited?
A. Possibly some time ago, but I -- I

don't recall.
Q. Okay. So -- withdrawn. I'll -- I'll go on.
How did you come to be the director of CLO HoldCo?
A. I was asked either by Jim Dondero or -- directly or indirectly by -- by Jim Dondero.
Q. And who is Jim Dondero?
A. Well, at the time, he was the head or one of the heads of Highland Capital Management, a friend of mine.
Q. How long have you known Mr. Dondero?
A. Since high school so that -- 1976.
Q. Where did you and Mr. Dondero grow up?
A. In northern New Jersey.
Q. Do you consider him among the closest friends you have?
A. I think he is my closest friend.
Q. Did you two go to college together?
A. We actually -- for the last -- last two years I was at UVA, University of Virginia, excuse me, he and I were -- were at UVA. So we

did not start out at UVA initially, but -- but we both transferred -- I transferred my sophomore year. I was actually a chemical engineer at the University of Delaware when I transferred in, and then he transferred in his junior year. So we were there at college for two years.
Q. And -- and based on your relationship with him, is it your understanding that one of the reasons he chose to transfer to UVA is -- is to -- because you were there?
A. Oh, no. He transferred -- he -- he -- he transferred there because of the -- so he went to the University of -- he -- he went to Virginia Tech University, which is more known as being an engineering school, which I might have wanted to go to, and less a finance business school. And if I understand things correctly, and I believe I do, he transferred to UVA because of the well-known business/finance program, accounting program.
Q. And did you -- did you and Mr. Dondero become roommates at UVA?
A. We weren't roommates, but we lived

in the -- we were housemates. I'm sorry. We were housemates.

Q. So you shared a house together. How would you describe your relationship with Mr. Dondero today?

A. It's -- it's been strained a while, for some time, but -- but generally, very good. Good to very good.

Q. Without -- without getting personal here, can you just generally identify the source of the strain that you described.

A. This -- I think it would be fair to say that this bankruptcy, particularly events in 2020 so some months after the bankruptcy was declared, things have become -- we -- we still have a close friendship, but -- but things are -- are a bit -- are a bit more difficult.

Q. Were you ever married?

A. I've never been married.

Q. Did you serve as Mr. Dondero's best man at his wedding?

A. I did.

Q. Is it fair to say that -- that Mr. Dondero trusts you?

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. Withdrawn.

Do you believe that Mr. Dondero trusts you?

A. I do.

Q. Over the years, is it fair to say that Mr. Dondero has confided in you?

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. You can answer if you understand it.

A. I think so.

Q. I -- I -- what's your answer? You think so?

A. Maybe you can de- -- I think of confide as -- could you define confide, please.

Q. Sure. Is it -- is it fair to say that over the -- let me -- you've known Mr. Dondero for almost 45 years, right?

A. Yes.

Q. And you consider him to be your closest friend in the world, right?

A. Yes.

Q. And is it fair to say over the

course of those 45 years, Mr. Dondero has shared confidential information with you that he didn't want you to reveal publicly to other people?

A. Yes.

Q. And is it your understanding that because of the nature of your relationship with him, he asked you to serve as the director of CLO HoldCo Limited?

A. Yes. I believe it's because he -- he trusted -- trusted me with -- with assets relating to his charitable vision. I -- I -- yeah. Yes.

Q. And is it your understanding that he thought you would help him execute his charitable vision?

A. That was the point of attraction initially. It wasn't for money. I wasn't being paid. That was -- the charitable mission was the attraction.

Q. Does Mr. Dondero play any role in the management of the CLO HoldCo Limited asset pool?

MR. CLARK: Objection, form.

A. I'm sorry. Could you repeat that? My -- my screen went small and then big again. I was distracted.

Q. What role does Mr. Dondero play with respect to the management of the CLO HoldCo Limited asset pool?

MR. CLARK: Objection, form.

A. He is with the company that manages that asset pool. He's one of the people I named previously as managing those assets.

Q. He is -- he -- he is the -- do you understand that he has the final decision-making power with respect to the management of the assets that are held by CLO HoldCo Limited?

MR. CLARK: Objection, form.

A. I believe I ansel -- answered that previously. I -- I don't know who has -- for certainty I do not know who has that within that company. I don't. If -- if -- I -- I don't know, consistent with my prior answer.

Q. Did you ever ask anybody who had the final decision-making authority for investments on behalf of CLO HoldCo Limited?

A. I -- I did not.
Q. Did you ever make a decision on behalf of -- withdrawn.
In your capacity as a director -- withdrawn.
In your capacity as the sole director of CLO HoldCo Limited, can you think of any decision that you've ever made that Mr. Dondero disagreed with?
A. Since -- prior to the bankruptcy, no, not that I'm aware of.
Q. And since the bankruptcy?
A. There are decisions that I've made that he's disagreed with.
Q. Can you identify them?
A. Yes.
Q. Please do so.
A. Okay. So the reason I'm pausing is I'm trying to put these in chronological order and, at the same time, identify maybe some of the more important ones versus the lesser important ones. One of the decisions I made related to a request that I received from the independent board of Highland. I don't know

how the request was transmitted to me, but I believe the way it played out is as follows: I believe I was asked to call Jim Seery, and the other -- and Russell Nelms, and the third independent director, I believe his name is John. I -- I forget right now what his last name is. They were in New York, said they were in a conference room. I called in. They were very pleasant. They identified who they were, and they had a request, and the request was that I agree to a transfer -- or that I -- that I agree to allow certain assets that were not Highland's assets but they were CLO's as- -- assets -- apparently, there was no dispute about that at any point in time, but that I agree to allow certain assets that were due CLO to be transferred to the registry of the bankruptcy court. And either on that call I immediately agreed or ended the call, called my attorney, and then immediately agreed. It was a very -- I accommodated the request quickly.
Q. Okay. And can you just tell me at what point in time you spoke with Mr. Dondero, and what did he say that you recall?

A. I don't know when he became aware of that decision. I'm not sure I ever volunteered that the decision was even made, but at some point, it became an issue because he found out through -- if I understand the sequence of events correctly, he found out possibly through his counsel because there was ultimately litigation about that issue. It became known to everyone at some point what I had done, I -- I think. And subsequent to that, it became an issue because of CLO HoldCo having fairly significant cash flow issues with respect to its expenses and obligations, including payment of management fees as well as some of the scheduled charitable giving that was -- that was by contract already predefined. My decision to tuck that money -- or to agree to -- my agreement to let that money be tucked away created some -- created some -- created some problems --
Q. And -- and --
A. -- for CLO HoldCo.
Q. Okay. And I just want you to focus specifically on my question, and that is, what

did Mr. Dondero say to you that -- that causes you to testify as you did, that this is one issue that he didn't agree with?
A. I believe his concern was that because it was money that was undisputably to flow to CLO HoldCo that -- which had many, many other nonliquid assets -- this was a form of a liquid asset. It was cash in effect, proceeds. -- that the money should have been allowed to flow to be available for obligations. He didn't under- -- I -- I -- I don't know what he was thinking, but the -- the issue was that the decision to put it into escrow was -- was -- was in- -- incorrect, that there was no basis for it.
Q. That -- that's an issue where after learning of your decision, he didn't agree with it; is that fair?
A. That's right.
Q. Okay. Can you think of any decision that you've ever made on behalf of CLO HoldCo Limited where Mr. Dondero had advance knowledge of what you were going to do and he objected to it, but you nevertheless overruled his

objection and went ahead and did what -- did what you thought was right?

A. Okay. Let me -- let me -- I have -- I'm sorry.

Q. We're here.

A. Oh, I'm sorry. I'm having some issues with my screen. So that may have occurred with respect to the original proof of claim. Then there was a subsequent amendment to the proof of claim, and I -- I believe it -- I believe that he might have been aware of both of those and was in disagreement with -- with those. But after working with my attorney, we just -- you know, we did what we thought was right, and I still think what we did was right. There was an issue with respect to Har- -- HarbourVest that occurred relatively recently where he objected to a decision that I had made. As I understand it, I could have contacted my attorney and changed the decision, but I didn't, and I still think that was the right decision.

We have filed plan objections. I can't say if he has any -- in that regard, I --

I -- I don't know what his thoughts are on objections. They would not have been communicated with -- by me to him, but my attorney might have consulted with his attorney, and there -- they may know what that difference is, but I -- that was just another big decision. I -- I -- maybe that --

Q. All right. Let me see if I can -- let me see if I can summarize this. So two proofs of claim. Is it fair to say that Mr. Dondero saw those proofs of claim before they were filed?

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. Withdrawn.

A. It --

Q. Do -- do you know whether Mr. Dondero saw the proofs of claim before they were filed?

A. I don't believe he did.

Q. What -- what steps in filing the proofs of claim did he object to that you overruled? Did he think there was -- something should be different about them?

A. So we had to interface with Highland employees at some point to get information to support our proof of claim, and my guess, and it's just a guess, is that he was aware of those inquiries. I -- I'm sorry. I shouldn't speculate. I don't know. But he -- with respect to the original proof of claim, I'm -- I'm not aware of what specifically he was objecting to or was -- thought should have been different, but the -- with respect to the amended proof of claim, which reduced the original proof of claim to zero, I think that's where he had a -- an issue.

Q. And did you speak with him about that topic prior to the time the amended claim was filed, or did you only speak with him after it was filed?

A. I'm not sure the timing of that.

Q. And with respect to HarbourVest, did he ask you to object to the settlement on behalf of CLO HoldCo Limited, and is that something that you declined to do?

MR. CLARK: Objection, form.

A. I'm -- I'm sorry. I was confused

with the word. Could you please repeat that?

Q. Yes. You mentioned HarbourVest before, right?

A. Yes.

Q. And you mentioned that there was an issue with Mr. Dondero and you concerning HarbourVest; is that right?

A. Yes.

Q. And did that have to do with whether or not CLO HoldCo Limited would -- would object to the debtor's motion to get the HarbourVest settlement approved?

A. Would -- would get the HarbourVest --

Q. Settlement approved by the court.

A. I'm not trying to be difficult. I'm -- I'm -- could you just repeat that one more time? I'm --

Q. What was -- what was --

A. There was --

Q. Let me try again.

A. Okay.

Q. What was the issue with respect to HarbourVest that he objected to and -- and you

overrode his objection and did what you thought was right anyway?

A. Okay. Okay. That's -- that's easier for me to understand. I'm sorry. So I had worked with my attorney or he did the work and consulted with -- we consulted, but we had filed an objection, motion objecting to the settlement, if I understand the terminology and nomenclature correctly. Okay. He had -- we had come to an agreement that we had a very valid argument. That argument was evidenced by, I guess it was, our motion that was submitted to the court. On the day of the hearing to resolve this issue, we pulled our request, and that was because I believed it did not have a good-faith basis in law to move forward on.

Q. And did you discuss that issue with Mr. Dondero before informing the court that CLO HoldCo Limited was withdrawing its objection, or did he learn about that for the first time during the hearing --

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. -- if you know?

A. I -- I understand that he learned it during the hearing. I don't know the -- I -- I don't know the -- whether there was any -- I -- I don't know for certain on the second half of your question.

Q. Let me -- let me try it -- let me try it this way: Did you speak with Mr. Dondero about your decision to withdraw the objection to the HarbourVest settlement prior to the time your counsel made the announcement in court?

A. I don't -- I don't believe so. No. No. No. I'm sorry. No.

Q. And did --

A. Okay. No. Here -- here's where I'm -- I can clarify, okay? I'm sorry. I can clarify.

Q. That's all right.

A. I gave the decision to my attorney -- I -- I agreed with the recommendation of my attorney, okay? It wasn't my --

Q. Did you have a good --

A. -- thought, okay?

THE REPORTER: I didn't --

A. Okay. So he --

Q. It was a recommendation.

A. Yeah. So he -- he called me with a recommendation. It was highly urgent. You know, I was coming out of the men's room, had my phone with me. I got the call.

MR. CLARK: Hey, Grant, I -- Grant, I just want to caution you not to -- to -- and I don't think counsel is looking for this but not to disclose the -- the substance of any of your communications with counsel, okay?

THE WITNESS: Thank you.

A. So --

THE WITNESS: Thank you. I'm -- I'm sorry.

BY MR. MORRIS:

Q. It's -- it's really a very simple question. Do you recall --

A. He made a recommendation. I -- I -- I think I can answer your question without going off tangent. I'm sorry. So he -- my

attorney made a recommendation. I agreed with it. We with- -- I -- I told him to withdraw -- or I authorized him to withdraw.

Q. Okay.

A. Then I received a communication, and I -- I guess the most likely scenario is the motion had been withdrawn by the time Jim Dondero found out.

Q. And -- and did he write to you, or did he call you? Did he send you a text?

A. He called me.

Q. What did he say?

A. He was asking why, and I explained, and I said I agreed with the decision and I was sticking with the decision.

Q. Let's just -- let's just move on to a new topic, and let's talk about the structure of -- of CLO HoldCo. Are you generally familiar with the ownership structure of CLO HoldCo?

A. Yeah. I mean, in terms --

Q. Are -- are you -- are you generally familiar with it? It's not a test. I'm just asking do you have a general familiarity --

A. With CLO HoldCo or the entities associated with CLO HoldCo?
Q. The latter.
A. Yes, I believe so.
Q. All right. I've prepared what's called a demonstrative exhibit. It's just --
A. Yes.
Q. -- just -- it's a document that, I think, reflects facts, but I want to ask you about it.
MR. MORRIS: La Asia, can we please put up Exhibit 1.
(SCOTT EXHIBIT 1, Organizational Structure: CLO HoldCo, Ltd., was marked for identification.)
BY MR. MORRIS:
Q. Okay. Can you see that, Mr. Scott?
A. Yes, I can.
Q. Okay. So I think I took the information from resolutions that were attached to the CLO HoldCo proof of claim, and that's why you got that little footnote there at the bottom of the page. But let's start in the lower right-hand corner and see if this chart

comports with your understanding of the facts.
Do you know that CLO HoldCo Limited was formed in the Cayman Islands?
A. Yes.
Q. And to the best of your knowledge, is CLO HoldCo Limited 100 percent owned by the Charitable DAF Fund, L.P.? If you're not sure, just say you're not sure if you don't know. It's not a test.
A. So the -- the -- the familiarity I -- I'm -- I'm familiar with the different -- I'm confused with the arrangement of the boxes and the ownership interest versus managerial interest. I believe that's -- that's right.
Q. Okay. And -- and you're the sole director of CLO HoldCo Limited, right?
A. Yes.
Q. And this whole structure was -- the idea for this structure, to the best of your knowledge, was to implement Mr. Dondero's plan for charitable giving; is that fair?
A. Yes. Ultimately, yes.
Q. And is it fair to say then that he -- he made the decision to establish this

particular structure, to the best of your knowledge?
A. I -- I didn't -- I'm sorry. I didn't hear you very well.
Q. To the best of your knowledge, did Mr. Dondero make the decisions to establish the structure that's reflected on this page?
A. Oh, I don't know if he made the decision to establish this structure, although it's -- it's -- I'm sorry. Strike that. I -- if -- if what you're saying is did he approve of this structure, to my knowledge, yes.
Q. Okay. Do you hold any position with respect to Charitable DAF Fund, L.P.?
A. I -- I -- your chart says no. I -- I -- I thought I had a role there, too.
Q. I don't know. I don't have information on that. That's why I'm asking the question.
A. I -- I -- I believe -- yes, I believe I have the same role as I do in -- in CLO HoldCo.
Q. And that would be director?
A. Yes.

Q. And to the best of your knowledge, is the Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.?
A. Yes.
Q. And is it your understanding that you are the managing member of Charitable DAF GP, LLC?
A. Yes.
Q. Does Charitable DAF GP, LLC, have any employees?
A. No.
Q. Does Charitable DAF GP, LLC, have any officers or directors?
A. No.
Q. Are you the only person affiliated with Charitable DAF GP, LLC, to the best of your --
A. I believe so.
Q. Do you receive any compensation for serving as the managing member of Charitable DAF GP, LLC?
A. No. The -- I don't interact with it very often. It's -- no, I don't receive any compensation.

Q. Can you tell me in your capacity as the managing member of Charitable DAF GP, LLC, what's the nature of that entity's business?

A. It -- it doesn't perform any day-to-day operations. My understanding is -- is that it's -- it's there for purposes of compliance. I can't recall the last time I had any activity with respect to that.

Q. How about the Charitable DAF Fund, L.P.? I apologize if I've asked you these questions.

A. It -- it's the same. I -- I -- my activity is almost exclusively CLO HoldCo.

Q. All right. Let me just ask the questions nevertheless. Does Charitable DAF Fund, L.P., have any employees?

A. Employees? No.

Q. Does it have any officers and directors?

A. No.

Q. Are you the sole director of Charitable DAF Fund, L.P.?

A. Yes, I believe so.

Q. So if we -- if we put under

Charitable DAF Fund, L.P., Grant Scott, director, and we put under CLO HoldCo Limited Grant Scott, director, would everything on the right side of that page be accurate, to the best of your --

A. I believe so.

Q. Well, let's move to the left side of the page. Have you heard of the entity Charitable DAF HoldCo Limited?

A. Yes.

Q. Are you the sole director of Charitable DAF HoldCo Limited?

A. Yes.

Q. How did you become -- how did you come to be the char- -- the sole director of Charitable DAF HoldCo Limited?

A. That was when it was established.

Q. And did Mr. Dondero ask you to serve in that capacity?

A. Yes.

Q. And did Mr. Dondero ask you to serve as the managing member of Charitable DA- -- DAF GP, LLC?

A. Yes.

Q. And did Mr. Dondero ask you to serve as the director of Charitable DAF, L.P. -- withdrawn.

Did Mr. Dondero ask you to serve as director of Charitable DAF Fund, L.P.?

A. Yes.

Q. To the best of your knowledge, does Charitable DAF HoldCo Limited own 99 percent of the limited partnership interests in Charitable DAF Fund, L.P.?

A. Yes. The -- the feed -- the -- the feeds -- the -- the three horizontal blocks there that identify Highland Dallas Foundation, Kansas City, Santa Barbara -- there's a fourth of -- relatively de minimus in terms of participation. There's a fourth entity that's missing. It's Dallas -- I forget the name. That -- that -- that structure is -- is a bit dated --

Q. Okay.

A. -- as it -- as is shown.

Q. Okay. So I will tell you and we can look the documents if you want, but attached to CLO HoldCo Limited's claim are a number of

resolutions, and there's one that I have in mind that shows Charitable DAF HoldCo Limited holding 99 percent of the limited partnership interests of Charitable DAF Fund, L.P., and there's another that shows it being a hundred percent. Do you -- do you know which is accurate at least at this time?

A. There's a 1 percent/99 percent division, and I am -- I believe it's the 99 percent, but I'm -- I'm getting confused by the -- by the arrangement. I'm so used to another arrangement. I -- I believe the 99 percent is correct.

Q. Okay. Do you have any understanding as to who owns the other 1 percent of the limited partnership interests of Charitable DAF Fund, L.P.?

A. No. This -- this is confusing to me. No.

Q. Okay. There are, at least on this page, three foundations that I think you've identified. Are those three foundations together with the fourth that you mentioned the owners of the Charitable DAF HoldCo Limited?

A. Owners?
Q. Yes.
MR. CLARK: Objection, form.
A. They -- they only participate in the money that flows up to them.
Q. And what does that mean exactly?
A. What's that?
Q. What does that -- what do you mean by that? Do the foundations fund Charitable DAF Fund HoldCo Limited?
A. Initially. Initially, as I understand it, the money flows downward into the Charitable DAF HoldCo Limited before it ultimately makes its way to CLO HoldCo, and then each of those three entities, the various foundations, obtain participation interest in the money that flows back to them.
Q. And -- and is that par- -- are those participation interests in Charitable -- you know what, let -- let me just pull up one document and see if that helps.
MR. MORRIS: Can we put up -- I think it's Exhibit Number 5.
(SCOTT EXHIBIT 2, Unanimous Written

Consent of Directors In Lieu of Meeting, was marked for identification.)
MR. MORRIS: I apologize. Let's go to --
MS. CANTY: I'm sorry, John. I can't hear you. Was that not the exhibit?
MR. MORRIS: 4.
MS. CANTY: Okay.
THE REPORTER: And Mr. Morris, you are -- Mr. Morris, you are breaking up just a little bit at the end of your questions.
BY MR. MORRIS:
Q. Okay. Do you see the document on the screen, sir?
A. Yes, I do.
Q. Okay. And so this is a unanimous written consent of the directors of the Highland Dallas Foundation. That's one of the entities that was on the chart.
MR. MORRIS: Can we scroll down to the -- the bottom of the document where the signature lines are. Right there.
BY MR. MORRIS:
Q. Are you a director of the Highland

Dallas Foundation?
A. Yes, selected by them.
Q. Selected by whom?
A. By that foundation.
Q. Are you -- are you a director of all of the four foundations that feed into the Charitable DAF HoldCo Limited entities that --
A. No.
Q. Which of the four foundations are you a director of?
A. This and the Santa Barbara -- I'm sorry, Santa Barbara and Kansas City.
Q. So is -- there's one that you're not a director of; is that right?
A. Yes.
Q. And which one is that?
A. The -- could you go back to the --
Q. Yeah.
MR. MORRIS: Go back to the demonstrative.
A. It's the Highland Dallas Foundation and Santa Barbara Foundation.
Q. Those are the two that you're a director of?

A. Yes.
Q. To the best of your knowledge, does Mr. Dondero serve as the president for each of the foundations that we're talking about?
A. Yes.
Q. To the best of your knowledge, is Mr. Dondero a director of each of the foundations that we're talking about?
A. Say that again. I'm sorry.
Q. Is he also a director of each of the foundations?
A. Yes.
Q. Do you know whether any of the foundations has any employees?
A. I believe they do, but I -- I -- I can't say for certain.
Q. Does -- withdrawn.
Do you know if there are any officers of any of the four foundations other than Mr. Dondero's service as president?
A. I'm sorry. Say that one more time, please.
Q. Yes. Do you know whether any of the four foundations has any officers other than

Mr. Dondero's service as president?
A. No.
Q. You don't know, or they do not?
A. I -- I don't believe anyone else has. I -- actually, I should say I don't -- I don't recall. I -- I don't know. I don't -- I don't know.
Q. As a director of the Dallas and Santa Barbara foundations, are you aware of any officers serving for either of those foundations other than Mr. Dondero?
A. No.
Q. Do you know who the beneficial owner of the Charitable DAF HoldCo Limited entity is?
A. The beneficial owner?
Q. Correct.
A. The various -- various trusts that were used to -- that were the vehicles by which the money originally was established within -- within -- within CLO HoldCo.
Q. Would that be -- would one of them be the Get Good Nonexempt Trust?
A. Yes.
Q. And you're a trustee of the Get Good

Nonexempt Trust, right?
A. Yes.
Q. When did you become a trustee of the Get Good Nonexempt Trust?
A. Many years ago. I -- I don't remember.
Q. Are there any other trustees of the Get Good Nonexempt Trust?
A. No.
Q. Does the Get Good Nonexempt Trust have any officers, directors, or employees?
A. No.
MR. CLARK: Objection, form. Sorry.
BY MR. MORRIS:
Q. Withdrawn.
Do you know whether the Get Good Nonexempt Trust has any officers, directors, or employees?
A. It does not.
Q. And I apologize if I asked this, but are you the only trustee of the Get Good Nonexempt Trust?
A. Yes.
Q. Is the Dugaboy Investment Trust also

one of the trusts that has an interest in Charitable DAF HoldCo Limited?
A. Yes.
Q. Are you a trustee of the Dugaboy Investment Trust?
A. I am not.
Q. Do you know who is?
A. I believe it's his sister.
Q. And is that -- you're referring to Mr. Dondero's sister?
A. I'm sorry. Yes.
Q. And what's the basis for your understanding that Mr. Dondero's siv- -- sister serves as the trustee of the Dugaboy Investment Trust?
A. Many years ago there was a -- there was a clerical error that identified me as the trustee of the Dugaboy. That error was present for approximately two weeks or a week and a half before it was detected and corrected, and so I know from that correction that it's Nancy Dondero.
Q. Are there any other trusts that have an interest in Charitable DAF HoldCo Limited

besides those trusts, to the best of your knowledge?
A. No.
Q. Is it your understanding based on what we've just talked about that the Get Good Nonexempt Trust and the Dugaboy Investment Trust are the indirect beneficiaries of CLO HoldCo Limited?
A. Yes.
Q. Can you tell me who the beneficiaries are of the Get Good trust?
A. I mean, Jim Dondero.
Q. And -- and what is that -- is that based on the trust agreement -- your knowledge of the trust agreement?
A. Yes.
Q. Do you have an understanding of who the beneficiary is of the Dugaboy Investment Trust?
A. I don't know anything about that trust.
MR. MORRIS: Okay. All right.
Let's take a short break and reconvene at 3:30 Eastern Time. We've been going for a

while.

MR. CLARK: Thank you.

MR. MORRIS: Okay. Thank you.

(Whereupon, there was a recess in the proceedings from 3:20 p.m. to 3:31 p.m.)

BY MR. MORRIS:

Q. Mr. Scott, earlier I think you testified that you interfaced with the folks at Highland in connection with your duties as the director of CLO HoldCo Limited, right?

A. Yes.

Q. Are you aware of any written agreement between Highland Capital Management and CLO HoldCo Limited?

A. Yes, the various servicer agreements.

Q. Okay. Are you aware that Mr. Dondero resigned from his position at Highland Capital Management sometime in October?

A. No.

Q. Have you communicated with anybody at Highland Capital Management about the

affairs of CLO HoldCo Limited at any time since October?

A. Yes.

Q. Anybody other than Jim Seery?

A. Yes.

Q. Okay. Let's start with Mr. Seery. You've spoken with him before, right?

A. Yes.

Q. Do you have his phone number?

A. Yes.

Q. How many times have you spoken with Mr. Seery, to the best of your recollection, just generally? It's not a test.

A. Three, maybe four times.

Q. Okay. Can you identify by name anybody else at Highland that you've spoken with since -- in the last two or three months?

A. I spoke to Jim Dondero. I've spoken with Mike Throckmorton. The usual suspects, so to speak. Mark Patrick, Mel- -- Melissa Schroth.

Q. Can you recall anybody else?

A. No. No. Sorry.

Q. Did you -- did you -- withdrawn.

Do you recall the subject matter of your discussions with Mr. Throckmorton?

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. Withdrawn.

Do you recall your -- the subject matter of your communications with Mr. Throckmorton?

MR. CLARK: Objection, form.

BY MR. MORRIS:

Q. You can answer.

A. I -- I regularly interface with Mr. Throckmorton regarding approvals of expenses, and he's my sort of -- he's my point person for approving wire transfers and things of that nature.

Q. How about Mr. Patrick, what -- what area of responsibility does he have with respect to CLO HoldCo Limited?

A. He -- he doesn't, to my knowledge.

Q. Do you recall the nature of the substance of any communications that you've had with Mr. Patrick since -- you know, the last two or three months?

A. Yes. Or -- yes.

Q. And what -- what are the nature of those conversations or the substance?

A. He was -- he was one of the individuals that helped to establish the hierarchy for the -- what I keep referring to as the charitable foundation.

Q. And -- and do you recall why you spoke to him in the last -- or -- withdrawn.

Do you recall the nature of your communications in the last two or three months with Mr. Patrick?

A. I --

MR. CLARK: And hold on, Grant. I'm going to caution -- my understanding -- I believe Mr. Patrick's an attorney, and so I'm going to caution you that you shouldn't disclose the substance of -- of those communications based on the attorney-client privilege.

MR. MORRIS: Well, I'm -- I -- I am the lawyer for the company so -- I guess there are other people on the phone and I appreciate that, but let's see if we can --

I don't mean to be contentious here, so it wouldn't -- I -- I'd be part of the privilege anyway.

BY MR. MORRIS:

Q. But in any event, can you tell me generally -- I'm just looking for general subject matter of your conversations with Mr. Patrick.

A. I asked him how I would go about re- -- resigning my position.

Q. And when did that conversation take place?

A. Within the last two weeks.

Q. Have you made a decision to resign?

A. No.

Q. I think you mentioned Melissa Schroth. Do I have that right?

A. Yes.

Q. Can you describe generally the communications you had with Ms. Schroth in the last few months.

A. They -- she has e-mailed me certain documents that I needed to sign. I had a conversation with her about -- about some

home -- home improvements, home construction with respect to Jim Dondero's home in Colorado, and that's -- I -- I think that's -- that's it.

Q. Okay. Do you recall communicating with anybody at Highland in the last three months other than Mr. Dondero, Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?

A. I -- I spoke with Jim Seery this week.

Q. Anybody else?

A. I don't -- I don't know.

Q. Okay.

A. I don't think so.

Q. In your communications with Mr. Seery, did you two ever discuss his reasons for making any trade on behalf of any CLO?

A. No.

Q. In your discussions with Mr. Seery, did you ever tell him that you believed that Highland Capital Management had breached any agreement in relation to any CLO?

A. Have I had that discussion with Jim Seery?

Q. Yes.

A. No.

Q. In your discussions with Mr. Seery, did you ever tell him that you thought Highland Capital Management was in default under any agreement in relation to the CLOs?

A. No.

Q. I want to focus in particular on the shared services agreement. In -- in your discussions with Mr. Seery, did you ever tell him that you believed that Highland Capital Management was in default or in breach of its shared services agreement with CLO HoldCo Limited?

A. No.

Q. In your communications with Mr. Seery, did you ever indicate any concern on the part of CLO HoldCo Limited with respect to Highland Capital's Man- -- Highland Capital Management's performance under the shared services agreement?

A. No.

Q. As you sit here today, do you have any reason to believe that Highland Capital Management has done anything wrong in

connection with its performance as the portfolio manager of the CLOs in which CLO HoldCo Limited has invested?

MR. CLARK: Object to form.

A. In terms of the -- are you saying -- please say that again. I'm sorry.

Q. That's okay. I ask long questions sometimes so forgive me, but I'm trying to get -- I'm trying to be precise so that's why it's difficult sometimes. But let me try again.

Does CLO HoldCo Limited contend that Highland Capital Management has done anything wrong in the performance of its duties as portfolio manager of the CLOs in which CLO HoldCo has invested?

MR. CLARK: Objection, form.

A. Yes. It's -- it's outlined in our objections to -- to the plan.

Q. Okay. Any -- are you aware of anything that's not contained within CLO Holdco Limited's objection to the plan?

MR. CLARK: Objection, form.

A. I don't know if this is responsive

to your quest -- request, but two -- two issues, I believe, also pose an in- -- a problem for CLO HoldCo. One is we are paying for services. I think I referred to the services as being soup to nuts, but we are not getting the full services. We haven't been for some time. So we're likely overpaying. There was a Highland Select Equity issue, 11-month payment that was delayed which I was unaware of was due. Normally, I would have interfaced with someone at Highland about that, but my attorney -- but my -- my attorney had to make a request for payment, and that payment was ultimately made. I -- other than that, I -- I don't -- I don't know. I don't believe so.

Q. I want to distinguish between the shared services agreement between Highland Capital Management and CLO HoldCo Limited on the one hand and on the other hand the management agreements pursuant to which Highland Capital Management manages certain CLOs that CLO HoldCo invests in.

You understand the distinction that I'm making?

A. Now I do. I'm sorry. I didn't appreciate that.

Q. Okay. So let's just take each of those pieces one at a time. You mentioned your concern about services. That's a concern that arises under the shared services agreement, right?

A. Yes.

Q. And you mentioned something about a delayed payment having to do with Highland Select. Do I have that generally right?

A. Correct.

Q. And is that a concern that you have that arises under the shared services agreement?

A. It's not the agreement with respect to the CLOs as I understand it.

Q. Okay. So then let's turn to that second bucket. You were aware -- you are aware, are you not, that Highland Capital Management has certain agreements with CLOs pursuant to which it manages the assets that are owned by the CLOs?

A. I'm so sorry. Could you please --

Q. I'll try again.

A. I'm just -- I'm sorry. I was distracted and -- and I -- I'm sorry for asking you to repeat it again. Please --

Q. Okay.

A. Please re- --

Q. Are you aware that CLO HoldCo Limited has made investments in certain CLOs?

A. Oh, yes, certainly.

Q. And are you aware that those CLOs are managed by Highland Capital Management?

A. Yes. As the -- as the servicer, yes.

Q. Okay. Have you ever seen any of the agreements pursuant to which Highland Capital Management acts as a servicer?

A. I've seen a few, yes.

Q. Does CLO HoldCo Limited contend that it is a party to any agreement between Highland Capital Management and the CLOs?

MR. CLARK: Object to form. And I just want to note for the record that Mr. Scott is here testifying in his individual capacity, I believe, not as a

corporate representative.

MR. MORRIS: Fair enough. But he is the only representative so...

MR. CLARK: Fair enough. I just want that made -- stated for the record, but I also object as to form.

MR. MORRIS: Got it.

A. It's a third-party beneficiary under the agreements.

Q. And is that because of something you read in the document, or is that just your belief and understanding?

A. My belief and understanding.

Q. And is that belief and understanding based on anything other than conversations with counsel?

A. In -- in -- recently it has, but I don't recall from previous interactions over the years how we discussed that or how I came to -- to understand that.

Q. Does HCLO [sic] HoldCo -- did -- in your capacity as the sole director of HCLO HoldCo Limited, are you aware of anything that Highland Capital Management has done wrong in

connection with the services provided under the CLO management agreements?

MR. CLARK: Objection, form.

A. I -- I don't -- I don't -- I don't -- your answer's no.

Q. In your capacity as the director of CLO HoldCo Limited, are you aware of any default or breach under the CLO management agreements that -- that Highland Capital Management has caused?

MR. CLARK: Objection, form.

A. We have raised the issue about ongoing sales in various -- I'm not sure whether they represent a technical breach, though.

Q. Okay. Are you aware of any technical breach?

MR. CLARK: Objection, form.

A. No.

Q. I'm sorry. You said, no, sir?

A. My answer's no.

Q. Thank you. Do you know who made the decision to cause the CLO HoldCo Limited entity to invest in the CLOs that are managed by

Highland Capital?

A. The select -- ultimately, I had to.

Q. I thought you testified earlier that you didn't make decisions as to investment. Do I have that wrong?

A. The selection.

Q. Okay.

A. I -- I'm --

Q. So -- so explain to me --

A. I have to approve -- I have to approve the selection. I'm sorry. But the people making -- I was putting that in the camp of the people that make the selection.

Q. Okay. Do you know if -- do you know if there are CLOs in the world that exist that aren't managed by Highland Capital Management?

MR. CLARK: Objection, form.

A. Are there CLOs in the -- in the world that are not --

Q. Yes.

A. Yes. It's -- it's a well-known -- it's a well-known --

Q. In your capacity as the director of CLO HoldCo Limited, did you ever consider

making an investment in a CLO that wasn't managed by Highland?

A. No.

Q. Is there any particular reason why you haven't given that any consideration?

A. That hasn't been my role. That's not my expertise. That's been something Highland has done and, quite frankly, over the years brilliantly so, no.

Q. You're aware that HCM, L.P., has filed for bankruptcy, right?

A. Yes.

Q. When did you learn that Highland had filed for bankruptcy?

A. After the fact sometime in late -- late 2019.

Q. Since the bankruptcy filing, have you made any attempt to sell CLO HoldCo Limited's position in any of the CLOs that are managed by Highland?

A. No.

Q. So notwithstanding the bankruptcy filing, you as the director haven't made any attempt to transfer out of the CLOs that are

managed by Highland, correct?

A. Correct.

Q. Did you ever give any thought to exiting the CLO vehicles that were managed by Highland in light of its bankruptcy filing?

A. No.

Q. Have you ever discussed with Mr. Seery anything having to do with the management -- withdrawn.

Have you ever discussed with Mr. Seery any aspect of the debtor's management of the CLOs in which CLO HoldCo Limited is invested?

A. No.

Q. You mentioned earlier a request to stop trading. Do I have that right?

A. Yes.

Q. Okay. And are you aware that a letter was written purportedly on behalf of CLO HoldCo Limited in which a request to stop trading was made?

A. As a cos- -- yeah. Yes.

Q. Okay. Have you ever seen that letter before?

A. Yes.
MR. MORRIS: Can we put up on the screen -- I think it's now Exhibit 6. It's Exhibit DDDD.
(SCOTT EXHIBIT 3, Letter to James A. Wright, III, et al., from Gregory Demo, December 24, 2020, with Exhibit A Attachment, was marked for identification.)
MR. MORRIS: Can we scroll down to, I guess, what's Exhibit A. Ri- -- right there.
BY MR. MORRIS:
Q. You see this is a letter Dece- -- dated December 22nd?
A. Yes.
Q. In the first paragraph there there's a reference to the entities on whose behalf this letter is being sent.
Do you see that?
A. Yes.
Q. Okay. So this letter was sent on December 22nd. Did you see a copy of it before it was sent?
A. A -- a draft -- an earlier draft of

this I did.
Q. Okay. Did you provide any comments to it?
A. I did.
MR. CLARK: Well, hold on. Grant, let me caution you. To the extent you provided comments to counsel, we're going to assert the attorney-client privilege on those comments.
MR. MORRIS: It's just a yes-or-no question. I'm not looking for the specifics.
MR. CLARK: Thank you.
A. Yes.
Q. Are you aware that earlier letters were -- withdrawn.
Are you aware that prior to December 22nd, the entities other than CLO HoldCo Limited that are listed in this pers- -- first paragraph had sent a letter making the same request?
A. With respect to a letter, no. No, I -- I did not.
Q. Are you aware as you sit here now

that the entities other than CLO HoldCo Limited that are listed in the first paragraph made a motion in the court asking the court for an order that would have prevented Highland from making any transactions for a limited period of time?
A. Yes.
Q. Did you know that motion was being made prior to the time that it was made?
A. I'm not sure.
Q. Did you ever think about whether CLO HoldCo Limited should join that particular motion?
A. I believe we were -- my attorney was aware of it. I don't recall our discussion about it. We were aware -- when I say we, I mean collectively -- and did not join it.
Q. Okay. Can you tell me why you did not join it.
MR. CLARK: And, again, Grant, to -- to the extent it's based on communications with counsel, you're free to say that but -- but not to disclose any substance of communications with counsel.

A. The subject of this letter on the 22nd which yielded the original letter you briefly showed me on the 24th as well as an additional letter on the 28th identified two points as I understand it. The first point is what I believe is the somewhat innocuous request to halt sales, not a demand in any way. And the second more substantive issue has to do with steps to remove Highland or a subsequent derived entity from Highland from the various services agreements that you had previously -- we had previously discussed. Neither of those issues met the require- -- neither of those issues led us to believe that a motion such as what you've just mentioned was -- was right --
Q. Okay.
A. -- because no -- no decision has been made on that.
Q. Okay.
MR. MORRIS: So I want to go back to my question and move to strike as nonresponsive, and I'll just ask my question again.
BY MR. MORRIS:

Q. Why did CLO HoldCo Limited decide not to participate in the earlier motion that was brought by the other entities that are identified in Paragraph 1 that asked the court to stop Highland from engaging in trades?

A. John, I'm so sorry. There was a feedback loop that came up when you started to re- -- re- -- recite -- restate your question. I'm sorry.

Q. That's okay. Why did CLO HoldCo Limited decide not to join in the earlier motion where the entities listed in Paragraph 1 asked the court to order Highland not to make any further trades? Why did they not join that motion?

A. The -- the issue didn't rise to the -- I don't believe we had formulated a legal basis sufficient to justify such steps. We hadn't laid the foundation necessary to -- to do that.

Q. Are you aware of what the court decided?

A. By virtue of the original letter you sent me dated the -- or show -- showed

initially dated the 24th, I have a general understanding of what they decided.

Q. Did you -- did you ever review the transcript of the hearing where the other parties asked the court to stop Highland from engaging in any further trades on the CLOs?

A. I did not.

Q. Is there anything different about the request in this letter, to the best of your knowledge, from the request that was made of the court just six days earlier?

MR. CLARK: Objection, form.

A. Yes. There's a -- in -- in my -- my view there's a substantial difference between filing an action converting a request into essentially a demand versus a gentle request with multiple caveats, that that request is not a demand.

Q. Okay. Let me ask you this: Are you aware -- what -- when did you first learn that Highland was making trades in its capacity as the servicer of the CLOs? When -- when did you first learn that Highland was doing that? Ten years ago, right? I mean --

A. Oh. Oh. Oh, I'm -- yeah. Yeah. Oh, yes. I'm sorry. Of course.

Q. Right? I mean, Highland has been making trades on behalf of CLOs for years, right?

A. Yes.

Q. And Highland was making trades on behalf of CLOs throughout 2020, to the best of your knowledge, right?

A. Yes.

Q. And you know when Jim Dondero was still with Highland, he was making trades on behalf of CLO -- on behalf of the CLOs, right?

A. Yes.

Q. And you never objected when Jim Dondero was doing it; is that right?

A. That is correct.

Q. Okay. So what changed that caused you in your capacity as the director of CLO HoldCo to request a full stoppage of trading?

A. It was my understanding that because of the bankruptcy and the removal of Jim Dondero that the replacement decision-makers did not have the expertise where I felt

comfortable with them making those decisions, but...

Q. I thought you testified earlier that you weren't aware that Mr. Dondero left Highland. Am I mistaken in my recollection?

A. I think you said in October, and I -- as I -- there's some con- -- I have confusion about when he left versus when he was still there but other -- but he was not making those trades.

Q. Okay. Fair enough. The bankruptcy has nothing to do with your desire to stop trading, right, because Highland traded for a year after the bankruptcy and never took any action to try to stop Highland from trading on behalf of the CLOs, fair?

A. The -- Highland as of right now isn't the same entity it was -- well, the decision-making team -- the -- the financial decision-making team for CLO Holdco's is no longer the team I have worked with, and upon discussion with counsel, we agreed -- I agreed to this letter, which I did, to just maintain the status quo.

Q. How did you form your opinion that the debtor doesn't have the expertise to execute trades on behalf of the CLOs today? What's the basis for that belief?

A. I -- as I understood it, the -- the people historically making that decision were no longer making that decision.

Q. Who besides Mr. Dondero -- withdrawn.

Who are you referring to?

A. Well, Mr. Dondero is one. I don't know the names, but I -- I understood it to mean that the group previously responsible, for exam- -- for example, Hunter Covitz, including Hun- -- him, were no longer involved in the decision-making process, but...

Q. How did you -- how -- how -- who gave you the information that led you to conclude that Hunter Covitz was no longer involved in the decision-making process?

A. Specifically him and that name being mentioned, I -- I -- I wasn't informed of his speci- -- him -- him being removed. I was under the impression that the team that had

previously been doing that was no longer doing it.

Q. And what gave you that impression?

A. Was communications I had with my attorney.

Q. Okay. Is there any source for your information that led you to conclude that the team was no longer there that was able to engage in the trades on behalf of the CLOs other than your attorneys?

A. Well, this -- this letter -- I -- I think the answer is no.

Q. Thank you. Do you know if Jim -- do you have an opinion or a view as to whether Jim Seery is qualified to make trades?

A. This --

MR. CLARK: Objection, form.

A. I don't know -- I spoke to Jim Seery earlier this week. You -- you asked me whether I had his number. I said I did. That's only because he called me. My phone rang with his number. It was a number I did not recognize, it was not in my contacts, but he left me a voice mail so I called him back. Then I

updated my contacts to -- to add his name so now I have his name. And during that conversation he informed me that he did have that expertise --

Q. And --

A. -- without me making any inquiry. He volunteered that.

Q. But you hadn't made any inquiry prior to the time that you authorized the sending of this letter; is that fair?

A. That's correct.

Q. Do you know whether Mr. Seery, in fact, engaged in transactions on behalf of the debtor since he was appointed back in January?

A. I do not.

Q. Did you ask that question prior to the time you authorized the sending of this letter?

A. I did not.

Q. Can you identify a single transaction that Jim Seery has ever made that you disagree with?

A. No.

Q. Can you identify any transaction

that the debtor made on behalf of any of the CLOs since the time that you understand Mr. Dondero left Highland that you disagree with?

A. No.

Q. Did you have any discussion with any representative of any of the entities listed on this document where they told you they believe Jim Seery didn't have the expertise to engage in transactions on behalf of the whole -- of the CLOs?

A. You -- your question -- I'm -- I'm sorry. I'm trying to be -- I'm trying to be a hundred perc- -- I'm trying to be accurate here.

Q. Let me interrupt you and just say, I'm very grateful for your testimony. I know this is not easy, and I do believe that you're earnestly and honestly trying to answer the questions the best you can. So no apologies necessary anymore. If you need me to repeat the question or rephrase it, just say that, okay?

A. Please -- yes.

Q. Okay.
A. Please -- please repeat that.
Q. Did you ever communicate with any employee, officer, director, representative of any of the entities that are on this page concerning the debtor's ability to service the CLOs?
A. I believe so.
Q. And can you identify the person or persons?
A. I think it's Jim Dondero.
Q. Anybody else other than Mr. Dondero?
A. No.
Q. When did you have that conversation or those conversations with Mr. Dondero?
A. This letter is dated the 22nd --
Q. Correct.
A. -- right?
Q. Yes.
A. I believe that's the Tuesday before Christmas, and this would have been on the 21st, the Monday.
Q. What do you recall about your conversation on the 21st regarding the

substance of this particular letter?
A. Jim Dondero described why he believed sales being made on an ongoing basis after a request was made to stop was im- -- improper.
Q. Do you -- do you rely on what Mr. Dondero said to you during that phone call on December 21st in -- in deciding to join in this particular letter?
A. No.
Q. Did you only then rely on the information you obtained from counsel?
A. Yes. I -- I -- I -- I considered this letter to be nearly the most gentle request imaginable amongst lawyers to maintain the status quo.
Q. And the request that's made in this letter is perfectly consistent with what Mr. Dondero told you on the 21st of December, correct?
A. I don't -- no.
Q. How --
MR. MORRIS: Can we go to the end of this letter, please. All right. Right

there.
BY MR. MORRIS:
Q. Do you see the request that's in the last sentence?
A. Yes.
Q. Is that the same thing that Mr. Dondero told you should happen, that -- that there should be no further CLO transactions at least until the issues raised and addressed by the debtor's plan were resolved substantively?
A. Yes.
Q. Is there anything that he said that's inconsistent with the request that's made here?
MR. CLARK: Objection, form.
A. This -- and can you -- can you show me earlier parts?
Q. Of course. You know what, I'll withdraw the question.
And let me see if I can do it this way: In your discussion with Mr. Dondero, did he indicate that he had seen a draft of this letter?

A. No. And I didn't -- I didn't have a discussion with him. I -- I merely listened to him. There was no -- I -- I had no input to the conversation.
Q. Okay. I -- I did -- I didn't -- I -- I appreciate that. So he called you; is that right?
A. We -- we called in.
Q. Oh, was it --
A. I --
Q. Was it --
A. I don't know --
Q. Was it --
A. I don't know the sequence of the calls. I'm sorry.
Q. Was there anybody on the call other than you and Mr. Dondero, the call that you're describing on December 21st?
A. Yes, my attorney and an attorney -- I believe the attorney that signed this letter.
Q. Okay. And I just want to focus on what Mr. Dondero said. Did he -- did he say during the call that Highland should not be engaging in any further CLO transactions?

A. He took a more -- if I can characterize his mental -- I looked at the issue of maintaining the status quo since there was somebody that was complaining about it, that that -- because it -- it isn't assets of Highland, it doesn't adversely affect Highland. If -- if stopping the sales -- you know, my -- my thought was -- is if stopping the sales reduces the likelihood of litigation disputes -- you already saw that there was the one from middle of December. I -- I thought that would be the more appropriate way to go. I didn't think there'd be any harm.

Q. And was that your --

A. I think -- I think Jim Dondero had a more legalistic view of its impro- -- im- -- improper nature.

Q. And did he share that view with you?

A. On Monday, yes.

Q. Can you describe for me your recollection of what he said about the legalistic view?

A. Just the mention of -- all I recall is in terms of -- the law associated with it

was -- the Advisers Act was mentioned --

Q. Did you have --

A. -- but I don't -- I don't know what that is. You know, I don't know what that is.

Q. And you -- and -- and you never -- it never occurred to you to pick up the phone and -- and to speak with Mr. Seery to see why it was he thought he should be engaging in transactions?

A. No. And -- but I -- my lack of volunteering a phone call to Jim Seery isn't -- it's -- it's because of -- I -- I thought any phone call by me to Jim Seery would be inappropriate because he's represented by counsel. I mean, we were working on claims against him --

Q. Okay.

A. -- right, so...

Q. Did you -- did you -- did you think to instruct your lawyers to reach out to Mr. Seery to actually speak to him instead of just sending a letter like this and to -- and to ask -- and to maybe inquire as to why he thought it was appropriate to engage in

transactions before they made a request six days after the court threw out their suit as frivolous? I'll withdraw that. That's too much.

A few days later did you authorize the sending of another letter to the debtor in which you suggested that the -- the entities on behoove -- on -- on whose behalf the letter was sent might take steps to terminate the CLO management agreements?

A. I did not see -- so there is a -- there is a December 28th letter.

MR. MORRIS: Let's just go to the next letter, and -- and let's just call that up.

BY MR. MORRIS:

Q. I think it's -- I think it's actually dated December 23rd. It was the next day.

A. Yes.

(SCOTT EXHIBIT 4, Letter to James A. Wright, III, et al., from Gregory Demo, December 24, 2020, with Exhibit A Attachment, was marked for identification.)

BY MR. MORRIS:

Q. And do you recall that the next day CLO HoldCo Limited joined in another letter to the debtors? Do you have that recollection?

A. Yes. Not -- not be- -- yes, I do, but -- yes, I do.

Q. Did you see this letter before it was sent?

A. I don't believe so.

Q. Did you authorize the sending of this letter?

A. I gave -- I relied on my attorney to guide me through this process.

Q. I appreciate that.

A. I let him make that call on this letter, which is -- copies most of the prior letter and then adds another issue.

Q. Okay. Do you have an understanding of what that issue is?

A. Yes.

Q. And what is your understanding of what that additional issue is?

A. Somewhere in this letter of the 23rd there's an -- there's an -- an inclusion of

a -- a statement of an -- a future intent.
Q. A future intent to do what?
A. To remove Highland as the servicer of the agreements you talked to me about previously.
Q. Can you tell me whether there's a factual basis on which CLO HoldCo Limited believes that the debtor should be removed as the servicer of the portfolio manager of the CLOs?
A. Yes. There are -- there are multiple bases to consider subject to all the other conditional language in the request of these letters to consider that going forward but no decision. That intent is an intent to evaluate, not an intent to take any action. I haven't authorized any action. I don't feel comfortable with my knowledge base at this time, but it's something being explored.
Q. So knowing everything that you know as of today, you have not yet formed a decision as to whether CLO HoldCo Limited will take any steps to terminate Highland's portfolio management agreements, correct?

A. I don't -- I don't want to be difficult, but I'm -- I'm confused yet again with your question. But I have not -- there -- there are a number of cr- -- a number of issues that with my nonfinance background would suggest to me that they -- they may be bases for -- for cause, to -- to assert a cause. And I've been conferring with my attorney about that, but it's very preliminary and no -- no decision has been made. I -- no decision is being made.
Q. So what -- what are the factors that are causing you to consider possibly seeking to begin the process of terminating the CLO management agreements?
A. Well, I guess I would break them down into maybe two categories, maybe more. The one that resonates most with me -- I don't know -- maybe because even though I'm a patent attorney, I guess at one point I was an attorney. But the thing that resonates most with me --
Q. You are an attorney.
A. -- at the moment -- well, now you

know why I'm a patent attorney and not one of you guys. But the thing that resonates with me the most from a legal substantive, black letter law sort of issue is the plan for reorganization, which we've objected to. I've re- -- I've reviewed the objection, and that sets forth our -- that sets forth my position, and I consider that to be quite material. The others are issues of practical effects of what's happened thus far with the bankruptcy, the termination of the experts with a long track record of success, the soon-to-be termination of all employees, the cancellation of various representation agreements, things of that nature looked at from an additive sort of perspective.
Q. You know that -- can we refer to the counterparties under the CLO management agreements as the issuers? Are you familiar with that term?
A. I -- I am familiar with the term issuers, yes.
Q. Okay. And do you understand --
A. There's an agreement between the --

I'm sorry.
Q. There's an agreement between the issuers and Highland pursuant to which Highland manages the CLO assets, right?
A. With res- -- yes.
Q. Okay. And do you understand what's going to happen to those management contracts in connection with the plan of reorganization?
A. Partially.
Q. What's your partial understanding?
A. Well, I -- I wouldn't want to characterize it as a partial understanding. I mean, with respect to part of the agreement.
Q. Okay.
A. Okay. Our plan objection lays out our basis for objecting to steps that Highland is actively taking to preclude us from the full rights that we have as third-party beneficiaries under that agreement, and they're not de minimus. They're quite material. They relate to cause issues and no-cause issues, for example, as out- -- as outlined in our -- our -- our objections.
Q. Okay. Did you ever make any attempt

to speak with any issuer concerning Highland's performance under the CLO management agreements?

A. No.

Q. Why not?

A. I -- I don't have any facts -- understand I -- I get all of the reports periodically from Highland -- from Highland. I -- I don't have a basis that I'm aware of to complain about performance issues. This is a legal issue that I'm talking about.

Q. So you have no basis to suggest that Highland hasn't performed under the CLO management agreements, correct?

A. Well, Highland as of right now, the -- the issue really is as -- as to what's next, not -- not -- I -- I don't -- I don't believe I have facts that support a com- -- a -- an issue right now. It's -- it's -- it's -- it's going forward that is the problem.

Q. I --

A. That's -- you know, that's --

Q. Have you given any thought to speaking with the issuers to try to get their

views as to what they think is going to happen in the future?

A. No.

Q. They're the -- they're the actual direct beneficiaries under the CLO management agreements, to the best of your understanding, right?

A. Yes. Their rights may not be impacted; it's CLO Holdco's rights that are going to be adversely impacted. So it's -- I don't know that our view is in alignment with their view. But to answer your question, no, we did not contact them.

Q. Do you have any knowledge or information as to any assertion by the issuers that Highland is in breach of any of the CLO management agreements?

A. No.

Q. Do you have any knowledge or information as to whether or not any of the issuers believe that Highland is in default under the CLO management agreements?

A. No, I don't have any of those facts.

Q. Are you aware that the issuers are

negotiating with Highland to permit Highland to assume the CLO management agreements and to continue operating under them?

A. I believe so --

Q. Is that --

A. -- but they're --

Q. Go ahead. I'm sorry.

A. As I understand it, Highland wants -- Highland or its subsidiary -- or its -- its -- its postbankruptcy relative -- post- -- excuse me, that Highland postbankruptcy -- or postplan confirmation wants to move forward, substitute itself for the prior issuer -- no, sorry, substitute itself for the prior servicer under those agreements to assume those agreements but in the process of assuming those agreements, carving out a bunch of provisions that from a legal standpoint and a potentially future practical and monetary standpoint are quite substantial, and that has to relate to the removal rights based on cause and without cause. As I understand it, that's all set forth in our plan objection.

Q. Okay. Are you aware of a third letter that was sent to Highland on behalf of CLO HoldCo and the other entities that are listed in this document?

A. The December 28th letter, is that what you mean?

Q. It's actually December 31st, if I can refresh your recollection.

MR. MORRIS: Can we put up Exhibit F?

(SCOTT EXHIBIT 5, Letter to Jeffrey N. Pomerantz from R. Charles Miller, December 31, 2020, was marked for identification.)

BY MR. MORRIS:

Q. You remember that there was a letter dated on or about December 31st that was sent -- oh, actually, you know, I apologize. If we scroll down to the -- to the next -- to the first box, there actually is no mention of CLO HoldCo.

Are you aware that Mr. Dondero was evicted from Highland's offices as of the end of the year?

A. I -- I didn't know the time, but I understand he's no longer there.
Q. Does CLO HoldCo Limited contend that it was damaged in any way by Mr. Dondero's eviction from the Highland suite of offices?
MR. CLARK: Objection, form.
A. I -- I don't have any information to support that as of this time.
Q. It's not -- it's not a belief that you hold today?
A. I don't have a belief of that, yes.
MR. MORRIS: All right. Let's take a short break. I may be done. I -- I'm grateful, Mr. Scott, and don't want to abuse your time. Give me -- let -- just let -- let's come back at 4:50, just eight minutes, and if I have anything further, it will be brief.
(Whereupon, there was a recess in the proceedings from 4:42 p.m. to 4:49 p.m.)
MR. MORRIS: Okay. Mr. Scott, thank you very much for your time. I have no further questions.

THE WITNESS: Thank you.
MR. CLARK: We will reserve our questions.
THE WITNESS: I appreciate it, John.
MR. MORRIS: Take care. Thanks for your time and your -- and your diligence. I do appreciate it. Take care, guys.
THE REPORTER: Okay.
MR. CLARK: Thank you.
MR. HOGEWOOD: No questions from us.
(Time Noted: 4:50 p.m.)

GRANT SCOTT

Subscribed and sworn to before me
this day of 2021.

C E R T I F I C A T E

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF WAKE)

I, LISA A. WHEELER, RPR, CRR, a Notary Public within and for the State of New York, do hereby certify:
That GRANT SCOTT, the witness whose deposition is hereinbefore set forth, having produced satisfactory evidence of identification and having been first duly sworn by me, according to the emergency video notarization requirements contained in G.S. 10B-25, and that such deposition is a true record of the testimony given by such witness.
I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, 2021.

Lisa Wheeler

LISA A. WHEELER, RPR, CRR

I N D E X

EXHIBITS

EXHIBIT 69

DC-21-09534

CAUSE NO. _____

IN RE JAMES DONDERO,	§	IN THE DISTRICT COURT
	§	95th
Petitioner.	§	_____ JUDICIAL DISTRICT
	§	
	§	DALLAS COUNTY, TEXAS

VERIFIED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

Petitioner James Dondero respectfully requests that this Court order, pursuant to Texas Rule of Civil Procedure 202, the deposition of the corporate representatives of Alvarez & Marsal CRF Management, LLC, and of Farallon Capital Management, LLC. Petitioner further requests that the Court order certain limited, yet relevant documents to be provided under Texas Rule of Civil Procedure 199.2 as set forth below.

Petitioner would respectfully show the Court that:

I.

PARTIES

1. Petitioner James Dondero ("Petitioner") is an individual resident in Dallas County, Texas and is impacted by the potential acts and omissions alleged herein.

2. Respondent Alvarez & Marsal CRF Management, LLC ("A&M") is a Delaware limited liability company serving as an investment adviser, with offices in Dallas County, Texas, at 2100 Ross Ave., 21st Floor, Dallas, Texas 75201.

3. Respondent Farallon Capital Management LLC is a limited liability company with its primary place of business in California ("Farallon" and together with A&M, the "Respondents") which is an investment fund located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

II.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter pursuant to Texas Rule of Civil Procedure 202. The anticipated lawsuit would include common law claims.

5. The Court has personal jurisdiction over A&M because it maintains a regular place of business in Dallas County. Personal jurisdiction is also proper under TEX. CIR. PRAC. REM. CODE § 17.003, and under § 17.042(1)-(3) because its acts on behalf of the Crusader Funds (as defined below), would constitute a tort in this state. Furthermore, it participated in substantial acts in this state which are the subject of the investigation. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

6. The Court has personal jurisdiction over Farallon because it, acting on behalf of itself or one of its subsidiaries/affiliates, communicated with representatives of Highland Capital Management, LP which is located in Dallas County, and with representatives of Acis and Josh Terry (both of whom are residents in Dallas County), to purchase claims in the Highland Capital Management, LP ("Highland") Chapter 11 bankruptcy case (the "Highland Bankruptcy Case"). Such acts, if shown to have occurred could constitute a tort in this state. Moreover, this Court has quasi *in rem* jurisdiction over any potential claims because the action concerns the sale of personal property that was located in Dallas County, and in which Plaintiff claims an interest.

7. Venue is proper in Dallas County, Texas, where venue of the anticipated lawsuit may lie and where the property at issue exists, and where a substantial amount of the acts and omissions underlying the potential suit occurred.

8. Removal is not proper because there is no basis for federal jurisdiction because a Rule 202 petition, as a pre-suit mechanism, does not meet Article III of the United States Constitution's standing requirement of an actual, live case or controversy.

III.

FACTUAL BACKGROUND

9. This matter arises out of Farallon's purchase of certain bankruptcy claims in the Highland Bankruptcy Case, pending in the Northern District of Texas bankruptcy court, from three sources: HarbourVest, Acis Capital Management, LP, and the Crusader Funds (as defined below).

10. Petitioner is the founder and former CEO of Highland and is an adviser and/or manager of several trusts who own the equity in Highland. In addition, Petitioner is an investor in Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the "Crusader Funds").

11. Until recently, the Crusader Funds were managed by Highland, but are now managed and advised by A&M.

12. Shortly after the commencement of the Highland Bankruptcy Case, the Office of the United States Trustee solicited Highland's twenty largest unsecured creditors to serve on the Official Committee of Unsecured Creditors in the Highland Bankruptcy Case (the "UCC").

13. As set forth below, the Information Sheet attached to such solicitation provided, *inter alia*,

> **Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any**

> **other reason the United States Trustee believes is proper in the exercise of her discretion**. (Emphasis in Original)

14. The UCC was originally populated by four members, (i) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), (ii) Acis Capital Management, L.P. (iii) UBS Securities LLC and UBS AG London Branch (together, "UBS") and (iv) Meta-E Discovery LLC.

15. Upon information and belief, two of Highland's creditors – the Redeemer Committee (a member of the UCC) and the Crusader Funds, who between them held approximately $191 million in claims in the Highland Bankruptcy Case (the "Crusader Claims")–sold their claims to Jessup Holdings LLC ("Jessup"), a newly established limited liability company established by Farallon right before the sale. It was formed for the purpose of holding claims Farallon purchased in the Highland Bankruptcy Case.

16. Upon information and belief, two other Highland creditors—Joshua Terry and Acis Capital Management (another member of the UCC), who between them held approximately $25 million in claims (the "Acis Claims")—sold their claims to Muck Holdings LLC ("Muck"), a newly established limited liability company set up by Farallon solely for the purpose of holding the Acis Claims that Farallon purchased.

17. Finally, another group of affiliated creditors, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P. (collectively, "HarbourVest") also sold $80 million worth of their claims (the "HarbourVest Claims", together with the Crusader Claims and Acis Claims, the "Claims") to Muck.

18. Notwithstanding the instructions issued by the Office of the United States Trustee, no one—not Farallon, nor the Redeemer Committee, HarbourVest or Acis Capital Management—ever sought, much less obtained Court approval to sell their respective claims.

19. Upon information and belief, a substantial amount of time passed between the agreement to sell the Claims and the consummation of such sales. Notwithstanding their agreement to sell their respective claims, neither the Redeemer Committee nor Acis Capital Management resigned from the UCC.

20. The current CEO of Highland, James Seery, has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

21. On a telephone call between Petitioner and a representative of Farallon, Michael Lin, Mr. Lin info rmed Petitioner that Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery's advice solely because of their prior dealings.

22. Mr. Seery had much to gain by brokering a sale of the Claims to Jessup and Muck—namely, his knowledge that Farallon—as a friendly investor—would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's rich compensation package incentivized him to continue the bankruptcy for as long as possible.

23. As Highland's current CEO, Mr. Seery had non-public, material information concerning Highland. Upon information and belief, such non-public, material information was the basis for instructing Farallon to purchase the Claims, in violation the Registered Investment Advisor Act 15 U.S.C § 80b-1 et seq., among other things.

24. Additionally, A&M, upon information and belief, did not put the Crusader Claims on the open market prior to selling them to Farallon. The sale of the Crusader Claims by A&M

was not pursuant to normal means and there is reason to doubt that A&M sought or obtained the highest price for the assets that it sold. This would have injured Petitioner as an investor in the Crusader Funds.

IV.

RELIEF SOUGHT

1. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, and to depose Michael Lin, on the following topics, to investigate any potential claims by Petitioner arising out of the highly irregular manner in which the Claim were marketed (if at all) and sold, within ten days of the Court's Order, or as agreed by the parties:

   a. A&M's agreements with the Crusader Funds, and the agreement(s) of those funds with their respective investors;

   b. The valuation, marketing and sale of the Claims to Farallon (or its subsidiaries/. affiliates);

   c. The negotiations and communications leading up to the purchase or sale of the Claims;

   d. Any discussions with James Seery regarding the Claims;

   e. Any prior relationship with James Seery.

2. As part of the Court's Order, Petitioner requests this Court to require Respondents to produce the following documents at their respective depositions:

   a. All agreements, contracts, or other documents (including any e-mails, correspondence, texts, drafts, term sheets, or communications related to same) related to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

   b. All communications with James Seery regarding the Claims;

   c. All communications with, between or among A&M, Seery, HarbourVest, Joshua Terry, Acis, or Highland Capital Management ,LP (or any agent or

representative thereof), regarding or related to the Claims (or any subset or portion thereof);

d. All communications regarding filing any notice with the Bankruptcy Court overseeing the Highland Bankruptcy Case or seeking such Court's approval for the sale or purchase of the Claims;

e. All offers to sell or purchase the Claims and/or all correspondence regarding same;

V.

HEARING

21. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the Petition.

22. FOR THESE REASONS, Petitioner asks the Court to set a date for hearing on this Petition, and after the hearing, to find that the likely benefit of allowing Petitioner to take the requested depositions outweighs the burden or expense of the procedure. Petitioner further asks the Court to issue an Order authorizing Petitioner to take the oral depositions of Michael Lin and a designated representative or representatives of A&M after proper notice and service at the offices of Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, Texas 75201, within ten (10) days of the Court's Order, or as agreed by the parties, and to produce the requested documents at said deposition. Petitioner also seeks any further relief to which he may be justly entitled.

Dated: July 22, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

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Counsel for Petitioner

VERIFICATION

I, the undersigned, have reviewed attached *Verified Petition to Take Deposition Before Suit and Seek Documents* and verify, pursuant to Tex. Civ. Prac. Rem. Code § 132.001 under penalty of perjury, that the factual statements therein, as stated, are true and correct, and are within the best of my personal knowledge as stated therein. The date of my birth is June 29, 1962, and my address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201.

Verified this 22nd Day of July, 2021.

James Dondero

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kim James on behalf of Mazin Sbaiti
Bar No. 24058096
krj@sbaitilaw.com
Envelope ID: 55626531
Status as of 7/23/2021 3:02 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kim James		krj@sbaitilaw.com	7/22/2021 5:53:07 PM	SENT
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EXHIBIT 70

FILED
5/2/2022 9:27 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Martin Reyes DEPUTY

CAUSE NO. DC-21-09534

IN RE JAMES DONDERO,	§	**IN THE DISTRICT COURT**
	§	
Petitioner.	§	**95th JUDICIAL DISTRICT**
	§	
	§	**DALLAS COUNTY, TEXAS**

VERIFIED AMENDED PETITION TO TAKE DEPOSITION BEFORE SUIT AND SEEK DOCUMENTS

Petitioner James Dondero respectfully requests that this Court order, pursuant to Texas Rule of Civil Procedure 202, the deposition of the corporate representatives and/or employees of Alvarez & Marsal CRF Management, LLC, and of Farallon Capital Management, LLC. Petitioner further requests that the Court order certain limited, yet relevant, documents to be provided under Texas Rule of Civil Procedure 199.2 as set forth in below.

Petitioner would respectfully show the Court that:

I.

PARTIES

1. Petitioner James Dondero ("Petitioner") is an individual resident in Dallas County, Texas, and is impacted by the potential acts and omissions.

2. Respondent Alvarez & Marsal CRF Management, LLC ("A&M") is a Delaware limited liability company serving as an investment adviser, with offices in Dallas County, Texas, at 2100 Ross Ave., 21st Floor, Dallas, Texas 75201.

3. Respondent Farallon Capital Management, L.L.C. ("Farallon") is an investment fund located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111, and Respondent Michael Lin is a principal at Farallon.

II.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter pursuant to Texas Rule of Civil Procedure 202. The anticipated lawsuit would include common law claims.

5. The Court has personal jurisdiction over Respondent Alvarez & Marsal because it maintains a regular place of business in Dallas County. Personal jurisdiction is also proper under Tex. Cir. Prac. Rem. Code § 17.003, and under §17.042(1)-(3) because A&M contracted with counterparties, Joshua Terry and Acis Capital Management, L.P., both of whom at the time had their principal place of business in Dallas County, Texas, and because its acts on behalf of the Crusader Funds (as defined below), if they occurred as believed they did, will have been tortious as to Petitioner. Moreover, this Court has quasi *in rem* jurisdiction because the action concerns the sale of personal property located in Dallas County in which Plaintiff claims an interest.

6. The Court has personal jurisdiction over Farallon because it contracted with A&M to purchase claims in the Highland Capital Management, L.P. Chapter 11 bankruptcy ("Highland bankruptcy") upon the recommendation of James Seery, Highland's CEO. Such acts, if shown to have occurred as believed and under the alleged circumstances, will have been tortious as to the Petitioner. Moreover, this Court has quasi *in rem* jurisdiction because the action concerns the sale of personal property located in Dallas County in which Plaintiff claims an interest.

7. Venue is proper in Dallas County, Texas, where venue of the anticipated lawsuit may lie and where the property at issue exists, and where a substantial amount of the acts and omissions underlying the potential suit occurred.

8. Removal is not proper because there is no basis for federal jurisdiction because a Rule 202 petition does not meet Article III of the United States Constitution's standing requirement.

III.

FACTUAL BACKGROUND

9. This matter arises out of purchase of certain bankruptcy claims in the Highland Bankruptcy.

10. Petitioner is the founder and former CEO of Highland Capital Management, L.P., currently a bankrupt debtor. He is also an investor in Highland Crusader Fund, Ltd. and several of its companion and affiliated funds (the "Crusader Funds"). Therefore, Petitioner has an interest in seeing to it that A&M properly marketed the claims for proper purposes and for the right price.

11. Until recently, the Crusader Funds were managed by Highland, and then by A&M when those funds went into liquidation.

12. Petitioner has an interest in the bankruptcy estate by virtue of his affiliation, and the fact that he is an adviser and/or manager of several trusts who own the equity of the debtor and therefore has an interest in seeing the equity properly protected in bankruptcy.

13. Shortly after the Highland bankruptcy was filed, the Chapter 11 Trustee issued an invitation to creditors to serve on the unsecured creditors committee (the "UCC").

14. The Trustee's invitation included a condition: namely, that anyone who served on the committee would have to agree that they would not sell their claims or in any way alienate them (including allowing them to be used as security) without leave of Court. Specifically, the United Trustee's instruction sheet stated:

> Creditors wishing to serve as fiduciaries on any official committee are advised that may not purchase, sell or otherwise trade in or transfer

> claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed questionnaire and accepting membership on official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing the creditor from the committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violation, or for any other reason the United States Trustee believes is proper in the exercise of her discretion.

15. Upon information and belief, two of the Highland creditors – the Redeemer Committee and the Crusader Fund, who between them owned approximately $191 million in claims in the bankruptcy as well as other assets (the "Crusader Claims") – sold their Claims and assets to Jessup Holdings LLC, a subsidiary of Stonehill Capital Management, LLC. Alvarez and Marsal made this sale, which was in violation of the foregoing order.

16. Alvarez and Marsal arguably owe fiduciary duties to the funds and funds investors, and may have violated those duties by failing to conduct a sale for proper value, and/or by engaging in other acts that resulted in a sale of assets that was not authorized and/or not allowed by the terms of the funds or by law.

17. Around the same time, another Highland creditor—Joshua Terry and Acis Capital Management, who have approximately $25 million in claims—also sold their claims to Muck Holdings, LLC, set up by Farallon Capital Management (the "Acis Claims").

18. And a third creditor, HarbourVest, sold its $80 million worth of claims (the "HarbourVest Claims") to Muck Holding as well.

19. The above interests are generally referred to hereinafter as the "Claims".

20. The sales of the Claims were not reported contemporaneously as they were supposed to have been, nor was leave of the bankruptcy court ever sought, much less obtained, for the sales.

21. However, Acis/Terry, and Crusader continued to serve on the UCC for a substantial period of time as if they hadn't sold their claims at all.

22. As was discovered by the Petitioner, the current CEO of Highland, James Seery, has an age-old connection to Farallon and to Stonehill and, upon information and belief, advised Farallon and Stonehill to purchase the Claims.

23. On a telephone call between Petitioner and Michael Lin, a representative of Farallon, Mr. Lin informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

24. In other words, Mr. Seery had inside information on the price and value of the claims that he shared with no one but Farallon for their benefit.

25. Mr. Seery's management duties come with a federally-imposed fiduciary duty under the Advisers Act of 1940.

26. Mr. Seery had much to gain by Farallon holding the claims—namely, his knowledge that Farallon—as a friendly investor—would allow him to remain as CEO while Highland remains bankrupt and get paid (whereas plainly, the selling members of the UCC were ready to move on, thus truncating Seery's supposed gravy train). Mr. Seery's rich compensation package incentivized him to continue the bankruptcy for as long as possible.

27. However, Mr. Seery is privy to material non-public information (i.e., "Inside Information") of many of the securities that Highland deals in, as well as in the funds that Mr. Seery manages through Highland. One of the assets was a publicly traded security that Highland was an insider of, and therefore, should not have traded (whether directly or indirectly), given its possession of insider information.

28. Thus, his confidential tip to Farallon to purchase the claims may have violated certain of his duties as a Registered Investment Adviser, federal Securities laws, and his duties to the bankruptcy estate.

29. Mr. Seery's duties also involve duties to manage the bankruptcy estate in a manner that would expeditiously resolve the bankruptcy. If the Unsecured Creditor Committee members (Acis, HarbourVest, and Redeemer) were indeed interested in selling their claims for less than the notional amount, then that would have been publicized in the required court filing. By failing to file them publicly and seeking court approval, the bankruptcy has been prolonged whilst Farallon seeks to reap a massive windfall return on its investment—a return that Seery apparently promised.

30. The sale of assets authorized by A&M was not pursuant to normal means, and there is reason to doubt that A&M sought or obtained the highest price for the assets that it sold.

IV.

RELIEF SOUGHT FROM ALVAREZ AND MARSAL

31. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of A&M, on the following topics, and to investigate any potential lawsuits arising out of the highly irregular manner in which the assets were marketed and sold, within ten days of the Court's Order, or as agreed by the parties:

a. A&M's rights and responsibilities and duties, including, but not limited to, under A&M's agreement(s) with the Crusader Funds and the Agreement(s) of those funds governing Petitioner's rights and duties as an investor (whether directly or indirectly);

b. The solicitation, offer, valuation, marketing, negotiation, and sale of the Highland bankruptcy claims or other assets by A&M on behalf of the Crusader Funds (and/or the Redeemer Committee) to any or all of Farallon, Stonehill Capital Management, LLC, Muck Holdings, LLC, Jessup Holdings, LLC, or any third party;

c. A&M's valuation, and negotiation of the price, of the Claims, its bases therefor, and what it communicated to potential purchasers about the value of the Claims, if anything;

d. The negotiations and communications leading up to the purchase or sale of the Claims, including, but not limited to:

i. Any discussions with James Seery or anyone at or on behalf of Highland Capital Management, L.P., the Creditors Committee, Sidley Austin, LLP, and/or F.T.I. Consulting, regarding the Claims, any plans with regards to Highland Capital Management, L.P., the liquidation or the value of the Claims, the likelihood of and quantum of payout of the Claims, the pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation;

ii. Any discussions with the purchasers of the Claims or other assets to, including, but not limited to, Farallon, Stonehill Capital Management, LLC, Jessup Holdings LLC or Muck Holdings, LLC, regarding the Claims or other assets, Highland Capital Management, L.P., the value of the Claims, the likely payout of the Claims, the pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation.

32. As part of the Court's Order, Petitioner requests this Court to require A&M to produce the following documents at their respective depositions:

a. All offers to sell or purchase the Claims and/or all correspondence regarding same;

b. A&M's agreement(s) with the Crusader Funds and the Agreement(s) of those funds governing Petitioner's rights and duties as an investor (whether directly or indirectly);

c. Any document reflecting the purported assets of, or valuation of, Highland Capital Management, L.P. at the time of the sale or marketing of the Claims;

d. Marketing materials, presentations, decks, information sheets, spreadsheets, or other documents sent to or provided to any purchaser, whether in a data room or as part of any marketing pitch, or during any due diligence process, relating to or concerning the liquidation value, potential or likely return on investment, asset valuation, purchase, marketing or sale of the Claims;

e. All documents, agreements, contracts (including any drafts, letters of intent, confidentiality agreements, term sheets) or communications related to same,

relating to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

f. Communications with James Seery or any other person on behalf of the Debtor, the U.S. Trustee's office, the Unsecured Creditors Committee, Joshua Terry, Acis Capital Management, LLC, Farallon, Stonehill Capital Management, LLC, Jessup Holdings LLC, or Muck Holdings, LLC (or anyone representing or signing on behalf of the foregoing) regarding the sale of the Claims or other assets, the value thereof, the expected amount or percentage of the Claims that would be paid and when such payment was expected to occur, the liquidation value of Highland Capital Management, L.P., potential sources of other cash to pay the claims, the liquidation of the Claims, the likely return from purchasing the Claims, the underlying assets securing the Claims.

g. Proofs of purchase of the Claims and other assets of the Crusader entities.

V.

RELIEF SOUGHT FROM FARALLON CAPITAL MANAGEMENT, L.L.C., MUCK HOLDINGS, LLC AND MICHAEL LIN

33. Petitioner asks this Court to issue an Order authorizing Petitioner to take a pre-suit deposition of a designated representative, or representatives, of Farallon Capital Management, L.L.C. or Muck Holdings, LLC, and to depose Michael Lin, on the following topics, to investigate any potential lawsuits arising out of the highly irregular manner in which the assets were marketed and sold, within ten days of the Court's Order, or as agreed by the parties:

a. Farallon, Muck Holdings, LLC, and/or Lin's understanding of the value of the Claims, the assets held or controlled by or to be acquired by Highland Capital Management, L.P.., the liquidation value of the Estate of Highland Capital Management, L.P., and/or Claims, how and when the claims were expected to be paid and what the expected percentage payoff was going to be, and the bases for such understanding or belief, and what was communicated to them about the value of the Claims;

b. The negotiations and communications leading up to the purchase or sale of the Claims, including, but not limited to, any discussions with sellers of any of the Claims regarding the Claims and the sale/purchase of the Claims, discussions with James Seery or anyone at or on behalf of Highland Capital Management, L.P. regarding the Claims and his plans with regards to Highland, the value of the Claims, the likely payout of the Claims, the

pricing of the Claims, and/or the assets that would secure the Claims or be liquidated to fund the Claims' liquidation, or any disclosures by James Seery or Highland Capital Management, L.P. regarding how the Claims were going to be paid;

c. Farallon and Michael Lin's awareness of material non-public information regarding Highland Capital Management, L.P. or securities held by Highland Capital Management, L.P.;

d. Farallon and Michael Lin's relationship with James Seery or Highland Capital Management, L.P. and their knowledge of his role and their ongoing relationship with him.

34. As part of the Court's Order, Petitioner requests this Court to require Farallon Capital Management, L.L.C., Muck Holdings LLC, and Michael Lin to produce the following documents at their respective depositions:

a. All offers to sell or purchase the Claims and/or all correspondence regarding same;

b. Any document reflecting the purported assets of, or valuation of, Highland Capital Management, L.P. at the time of the sale or marketing of the Claims;

c. Marketing materials, presentations, decks, information sheets, spreadsheets, or other documents sent to or provided to any purchaser, whether in a data room or as part of any marketing pitch, or during any due diligence process, relating to or concerning the liquidation value, potential or likely return on investment, asset valuation, purchase, marketing or sale of the Claims.

d. All agreements, contracts, or other documents (including any drafts, letters of intent, confidentiality agreements, term sheets, or communications related to same) relating to or concerning the valuation, purchase, marketing or sale of the Claims (or any subset of the Claims);

e. All communications with James Seery or any other person on behalf of the Debtor, the U.S. Trustee's office, the Unsecured Creditors Committee, Joshua Terry, Acis Capital Management, LLC, Farallon, Stonehill Capital Management, LLC, Jessup Holdings, LLC or Muck Holdings, LLC (or anyone representing or signing on behalf of the foregoing) regarding the sale of the Claims or other assets, the value thereof, the expected amount or percentage of the Claims that would be paid and when such payment was expected to occur, the liquidation value of Highland Capital Management, L.P., potential sources of other cash to pay the Claims, the liquidation of the

Claims, the likely return from purchasing the Claims, the underlying assets securing the Claims.

f. Proofs of purchase of the Claims and other assets of the Crusader entities.

VI.

REQUEST FOR HEARING & ORDERS

35. After service of this Amended Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on the Petition and order the requested relief.

36. Document discovery is permitted by Rule 199.2. Rule 202.5 states that "depositions authorized by this Rule are governed by the rules applicable to depositions of nonparties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed…." Rule 199.2 governs such actions and "expressly allows a party noticing a deposition to include a request for production of documents or tangible things within the scope of discovery and within the witness's possession, custody, or control." *In re City of Tatum*, 567 S.W.3d 800, 808 (Tex. App.—Tyler 2018) (holding that district court properly ordered document discovery in Rule 202 action). *See also* Tex. R. Civ. P. 205.1(c) (authorizing party to compel discovery from a nonparty by court order or subpoena, including a request for production served with a deposition notice). *See also City of Dall. v. City of Corsicana*, Nos. 10-14-00090-CV, 10-14-00171-CV, 2015 Tex. App. LEXIS 8753, at *15-16 (Tex. App.—Waco Aug. 20, 2015) ("Under rule 202, documents can be requested in connection with a deposition…. Accordingly, the trial court's order is not an abuse of discretion to the extent that it allows Navarro to obtain documents in an oral deposition under rule 199 or a deposition on written questions under rule 200."); *In re Anand*, No. 01-12-01106-CV, 2013 Tex. App. LEXIS 4157, at *9 (Tex. App.—Houston [1st Dist.] Apr. 2, 2013) ("the language of these rules when read together

permits a petition seeking a pre-suit deposition under Rule 202 to also request the production of documents").

37. **FOR THESE REASONS**, Petitioner asks the Court to set a date for hearing on this Amended Petition, and after the hearing, to find that the likely benefit of allowing Petitioner to take the requested depositions outweighs the burden or expense of the procedure. Petitioner further asks the Court to issue an Order authorizing Petitioner to take the oral depositions of the Respondents after proper notice and service at the offices of Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, Texas 75201, within ten (10) days of the Court's Order, or as otherwise agreed to by the parties, and to produce the requested documents prior to said deposition. Petitioner also seeks any further relief to which he may be justly entitled.

Dated: May 2, 2022

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti
Texas Bar No. 24058096
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bjr@sbaitilaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on this 2nd day of May, 2022.

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti

VERIFICATION

STATE OF TEXAS §
§
DALLAS COUNTY §

Before me, the undersigned Notary Public, on this day personally appeared James Dondero (hereinafter "Affiant"), who is over the age of 21 and of sound mind and body, who being by me duly sworn, on his oath deposed and said that he has read the foregoing Amended Verified Petition to Take Deposition Before Suit, and that the statements of fact therein are within his personal knowledge and are true and correct as stated, Further, Affiant stated that the Affiant has personal knowledge because of Affiant's relationships and interactions as described therein.

James Dondero

SUBSCRIBED AND SWORN TO BEFORE ME on this 25 day of April, 2022, to certify which witness my hand and official seal.

My commission expires on 12.9.2025.

Notary Public of the State of Texas

seal

Robin Morrison
My Commission Expires
12/9/2025
Notary ID
133483390

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kim James on behalf of Mazin Sbaiti
Bar No. 24058096
krj@sbaitilaw.com
Envelope ID: 64114982
Status as of 5/3/2022 2:58 PM CST

Case Contacts

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Charlotte Casso		bcc@sbaitilaw.com	5/2/2022 9:27:04 PM	SENT

EXHIBIT 71

CAUSE NO. DC-21-09534

IN RE:	§	IN THE DISTRICT COURT
JAMES DONDERO,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	95TH JUDICIAL DISTRICT

ORDER

Came on for consideration the *Verified Amended Petition to Take Deposition Before Suit and Seek Documents* ("Petition") filed by petitioner James Dondero ("Dondero"). The Court, having considered the Petition, the responses filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Alvarez & Marsal CRF Management, LLC ("A&M"), the record, and applicable authorities, and having conducted a hearing on the Petition on June 1, 2022, concludes that Dondero's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that Dondero's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 1st day of June, 2022.

HONORABLE MONICA PURDY

EXHIBIT 72

FILED
1/20/2023 4:29 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Stephanie Clark DEPUTY

DC-23-01004

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	191st
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S
VERIFIED RULE 202 PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Hunter Mountain Investment Trust ("HMIT"), files this Verified Petition ("Petition") pursuant to Rule 202 of the Texas Rules of Civil Procedure, seeking pre-suit discovery from Respondent Farallon Capital Management, LLC ("Farallon") and Respondent Stonehill Capital Management, LLC ("Stonehill") (collectively "Respondents"), to allow HMIT to investigate potential claims against Respondents and other potentially adverse entities, and would respectfully show:

PARTIES

1. HMIT is a Delaware statutory trust that was the largest equity holder in Highland Capital Management, L.P. ("HCM"), holding a 99.5% limited partnership interest. HCM filed chapter 11 bankruptcy proceedings in 2019 and, as a result of these

proceedings,[1] HMIT held a Class 10 claim which, post-confirmation, was converted to a Contingent Trust Interest in HCM's post-reorganization sole limited partner.

2. Farallon is a Delaware limited liability company with its principal office in California, which is located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

3. Stonehill is a Delaware limited liability company with its principal office in New York, which is located at 320 Park Avenue, 26th Floor, New York, NY 10022.

VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas, because all or substantially all of the events or omissions giving rise to HMIT's potential common law claims occurred in Dallas County, Texas. In the event HMIT elects to proceed with a lawsuit against Farallon and Stonehill, venue of such proceedings will be proper in Dallas County, Texas.

5. This Court has jurisdiction over the subject matter of this Petition pursuant to Texas Rule of Civil Procedure 202.[2] The amount in controversy of any potential claims against Farallon or Stonehill far exceeds this Court's minimum jurisdictional requirements. Without limitation, HMIT specifically seeks to investigate potentially actionable claims for unjust enrichment, imposition of a constructive trust with

[1] These proceedings were initially filed in Delaware but were ultimately transferred to and with venue in the U.S. Bankruptcy Court for the Northern District of Texas.

[2] The discovery relief requested in this Petition does not implicate the HCM bankruptcy court's jurisdiction. Furthermore, this Rule 202 Petition is not subject to removal because there is no amount in actual controversy and there is no cause of action currently asserted.

disgorgement, knowing participation in breaches of fiduciary duty, and tortious interference with business expectancies.

6. This Court has personal jurisdiction over the Respondents from which discovery is sought because both Farallon and Stonehill are doing business in Texas under Texas law including, without limitation, TEX. CIV. PRAC. & REM. CODE §17.042. Consistent with due process, Respondents have established minimum contacts with Texas, and the assertion of personal jurisdiction over Respondents complies with traditional notions of fair play and substantial justice. HMIT's potential claims against Respondents arise from and/or relate to Farallon's and Stonehill's contacts in Texas. Respondents also purposefully availed themselves of the privilege of conducting business activities within Texas, thus invoking the benefits and protections of Texas law.

SUMMARY

7. HMIT seeks to investigate potential claims relating to the sale and transfer of large, unsecured creditors' claims in HCM's bankruptcy to special purpose entities affiliated with and/or controlled by Farallon and Stonehill (the "Claims"). Upon information and belief, Farallon and Stonehill historically had and benefited from close relationships with James Seery ("Seery"), who was serving as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") at the time of the Claims purchases. Furthermore, still upon information and belief, because Farallon and Stonehill acquired or controlled the acquisition of the Claims under highly questionable

circumstances. HMIT seeks to investigate whether Respondents received material non-public information and were involved in insider trading in connection with the acquisition of the Claims.

8. The pre-suit discovery which HMIT seeks is directly relevant to potential claims, and it is clearly appropriate under Rule 202.1(b). HMIT anticipates the institution of a future lawsuit in which it may be a party due to its status as a stakeholder as former equity in HCM or in its current capacity as a Contingent Trust Interest holder, as well as under applicable statutory and common law principles relating to the rights of trust beneficiaries. In this context, HMIT may seek damages on behalf of itself or, alternatively, in a derivative capacity and without limitation, for damages or disgorgement of monies for the benefit of the bankruptcy estate.

9. HMIT currently anticipates a potential lawsuit against Farallon and Stonehill as defendants and, as such, Farallon and Stonehill have adverse interests to HMIT in connection with the anticipated lawsuit. The addresses and telephone numbers are as follows: **Farallon Capital Management LLC**, One Maritime Plaza, Suite 2100, San Francisco, CA 94111, Telephone: 415-421-2132; **Stonehill Capital Management**, LLC, 320 Park Avenue, 26th Floor, New York, NY 10022, 212-739-7474 . Additionally, the following parties also may be parties with adverse interests in any potential lawsuit: **Muck Holdings LLC**, c/o Crowell & Moring LLP, Attn: Paul B. Haskel, 590 Madison Avenue, New York, NY 10022, 212-530-1823; **Jessup Holdings LLC**, c/o Mandel, Katz and Brosnan

LLP, Attn: John J. Mandler, 100 Dutch Hill Road, Suite 390, Orangeburg, NY 10962, 845-6339-7800.

BACKGROUND[3]

A. *Procedural Background*

10. On or about October 16, 2019, HCM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.

11. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee, which is a committee of investors in an HCM-affiliated fund known as the Crusader Fund that obtained an arbitration award against HCM in the hundreds of millions of dollars; Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS") - and an unpaid vendor, Meta-E Discovery.

12. Following the venue transfer to Texas on December 27, 2019, HCM filed its *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*

[3] All footnote references to evidence involve documents filed in the HCM bankruptcy proceedings and are cited by "Dkt." reference. HMIT asks the Court to take judicial notice of the documents identified by these docket entries.

Course ("HCM's Governance Motion").[4] On January 9, 2020, the Court signed an order approving HCM's Settlement Motion (the "Governance Order").[5]

13. As part of the Governance Order, an independent board of directors—which included Seery as one of the UCC's selections—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors") HCM's general partner. Following the approval of the Governance Order, the Board then appointed Seery as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") in place of the previous CEO.[6] Seery currently serves as Trustee of the Claimant Trust (HCM's sole post-reorganization limited partner) and, upon information and belief, continues to serve as CEO of HCM following the effective date of the HCM bankruptcy reorganization plan ("Plan").[7]

B. Seery's Relationships with Stonehill and Farallon

14. Farallon and Stonehill are two capital management firms (similar to HCM) that, upon information belief, have long-standing relationships with Seery. Upon information and belief, they eventually participated in, directed and/or controlled the acquisition of hundreds of millions of dollars of unsecured Claims in HCM's bankruptcy on behalf of funds which they manage. It appears they did so without any meaningful

[4] Dkt. 281.
[5] Dkt. 339.
[6] Dkt. 854, Order Approving Retention of Seery as CEO/CRO.
[7] *See* Dkt. 1943, Order Approving Plan, p. 34.

due diligence, much less reasonable due diligence, and *ostensibly* based their investment decisions only on Seery's input.

15. Upon information and belief, Seery historically has had a substantial business relationship with Farallon and he previously served as legal counsel to Farallon in other matters. Upon information and belief, Seery also has had a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee[8] (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

C. Claims Trading

16. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of settlements with Redeemer, Acis, UBS, and another major creditor, HarbourVest[9] (the "Settlements") (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed claims:[10]

[8] Declaration of John A. Morris [Dkt. 1090], Ex. 1, pp. 15.
[9] "HarbourVest" collectively refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.
[10] Orders Approving Settlements [Dkt. 1273, Dkt. 1302, Dkt. 1788, Dkt. 2389].

Creditor	Class 8	Class 9
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm

17. Although these Settlements were achieved after years of hard-fought litigation,[11] each of the Settling Parties ***curiously*** sold their claims to Farallon or Stonehill (or affiliated special purpose entities) shortly after they obtained court approval of their Settlements. One of these "trades" occurred within just a few weeks before the Plan's Effective Date.[12] Upon information and belief, Farallon and Stonehill coordinated and controlled the purchase of these Claims through special purpose entities, Muck Holdings, LLC ("Muck") and Jessup Holdings, LLC ("Jessup") (collectively "SPEs").[13] Upon information and belief, both of these SPEs were created on the eve of the Claims purchases for the ostensible purpose of taking and holding title to the Claims.

18. Upon information and belief, Farallon and Stonehill directed and controlled the investment of over $160 million dollars to acquire the Claims in the absence of any publicly available information that could rationally justify this substantial investment. These "trades" are even more surprising because, at the time of the confirmation of HCM's Plan, the Plan provided only pessimistic estimates that these Claims would ever receive full satisfaction:

[11] Order Confirming Plan, pp. 9-11.
[12] Dkt. 2697, 2698.
[13] *See* Notice of Removal [Dkt 2696], ¶ 4.

a. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[14]

   i. This meant that Farallon and Stonehill invested more than $163 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.

b. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%* (down approximately $328.3 million);[15]

c. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million;[16]

d. Despite the stark decline in the valuation of the HCM bankruptcy estate and reduction in percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021[17] in the combined amount of approximately $163 million; and

e. Upon information and belief:

   i. Stonehill, through an SPE, Jessup, acquired the Redeemer Committee's claim for approximately $78 million;[18]

[14] Dkt. 1875-1, Plan Supplement, Exh. A, p. 4.
[15] Dkt. 2949.
[16] Dkt 1473, Disclosure Statement, p. 18.
[17] Notices of Transfers [Dkt. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].
[18] July 6, 2021 Letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

ii. The $23 million Acis claim[19] was sold to Farallon/Muck for approximately $8 million;

iii. HarbourVest sold its combined approximately $80 million in claims to Farallon/Muck for approximately $27 million; and

iv. UBS sold its combined approximately $125 million in claims for approximately $50 million to both Stonehill/Jessup and Farallon/Muck ***at a time when the total projected payout was only approximately $35 million***.

19. In Q3 2021, just over $6 million of the projected $205 million available to satisfy general unsecured claims was disbursed.[20] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[21] According to HCM's Motion for Exit Financing,[22] and a recent motion filed by Dugaboy Investment Trust,[23] there remain ***substantial*** assets to be monetized for the benefit of HCM's creditors. Thus, upon information and belief, the funds managed by Stonehill and Farallon stand to realize significant profits on their Claims purchases. In turn, upon information and belief, Stonehill and Farallon will garner (or already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the purchase of the Claims.

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[19] Seery/HCM have argued that $10 million of the Acis claim is self-funding. Dkt. 1271, Transcript of Hearing on Motions to Compromise Controversy with Acis Capital Management [1087] and the Redeemer Committee of the Highland Crusader Fund [1089], p. 197.
[20] Dkt. 3200.
[21] Dkt. 3582.
[22] Dkt. 2229.
[23] Dkt. 3382.

D. ***Material Information is Not Disclosed***

20. Bankruptcy Rule 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." No public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."[24]

21. As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction.[25] Approximately 19.1% of HCLOF's assets were comprised of debt and equity in Metro-Goldwyn-Mayer Studios, Inc. ("MGM"). The HCLOF interest was not to be transferred to HCM for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[26]

22. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, upon information and belief, it appears that Seery may have acquired material non-public information regarding Amazon's now-consummated interest in acquiring MGM,[27] yet there is no record of Seery's disclosure of such

[24] Dkt. 1905, February 3, 2021 Hearing Transcript, 49:5-21.
[25] Dkt. 1625, p. 9, n. 5.
[26] Dkt. 1625.
[27] Dkt. 150-1.

information to the Court, HCM's creditors, or otherwise. Upon the receipt of this material non-public information, HMIT understands, upon information and belief, that MGM was supposed to be placed on HCM's "restricted list," but Seery nonetheless continued to move forward with deals that involved MGM assets.[28]

23. As HCM additionally held its own direct interest in MGM,[29] the value of MGM was of paramount importance to the value of HCM's bankruptcy estate. HMIT believes, upon information and belief, that Seery conveyed material non-public information regarding MGM to Stonehill and Farallon as inducement to purchase the Claims.

E. ***Seery's Compensation***

24. Upon information and belief, a component of Seery's compensation is a "success fee" that depends on the actual liquidation of HCM's bankruptcy estate assets versus the Plan projections. As current holders of the largest claims against the HCM estate, Muck and Jessup, the SPEs apparently created and controlled by Stonehill and Farallon, were installed as two of the three members of an Oversight Board in charge of monitoring the activities of HCM, as the Reorganized Debtor, and the Claimant Trust.[30] Thus, along with a single independent restructuring professional, Farallon and

[28] *See* Dkt. 1625, Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith, filed December 23, 2020
[29] Motion for Exit Financing.[Dkt.2229]
[30] Dkt. 2801.

Stonehill's affiliates oversee Seery's go-forward compensation, including any "success" fee.[31]

DISCOVERY REQUESTED

25. HMIT seeks to investigate whether Farallon and Stonehill received material non-public information in connection with, and as inducement for, the negotiation and sale of the claims to Farallon and Stonehill or its affiliated SPEs. Discovery is necessary to confirm or deny these allegations and expose potential abuses and unjust enrichment.

26. The requested discovery from Farallon is attached as Exhibit "A", and includes the deposition of one or more of its corporate representatives and the production of documents. The requested discovery from Stonehill is attached as Exhibit "B", and includes the deposition of Stonehill's corporate representative(s) and the production of documents.

27. Pursuant to Rule 202.2(g), the requested discovery will include matters that will allow HMIT to evaluate and determine, among other things:

a. The substance and types of information upon which Stonehill and Farallon relied in making their respective decisions to invest in or acquire the Claims;

b. Whether Farallon and Stonehill conducted due diligence, and the substance of any due diligence when evaluating the Claims;

[31] Claimant Trust Agreement [Dkt. 1656-2].

c. The extent to which Farallon and Stonehill controlled the SPEs, Muck and Jessup, in connection with the acquisition of the Claims;

d. The creation and organizational structure of Farallon, Stonehill, Muck, and Jessup, as well as the purpose of creating Muck and Jessup as SPEs to hold the Claims;

e. Any internal valuations of Muck or Jessup's net asset value (NAV);

f. Any external valuation or audits of the NAV attributable to the Claims;

g. Any documents reflecting expected profits from the purchase of the Claims;

h. All communications between Farallon and Seery concerning the value and purchase of the Claims;

i. All communications between Stonehill and Seery concerning the value and purchase of the Claims;

j. All documents reflecting the expected payout on the Claims;

k. All communications between Farallon or Stonehill and HarbourVest concerning the purchase of the Claims;

l. All communications between Farallon or Stonehill and Acis regarding the purchase of the Claims;

m. All communications between Farallon or Stonehill and UBS regarding the purchase of the Claims;

n. All communications between Farallon or Stonehill and The Redeemer Committee regarding the purchase of the Claims;

o. All communications between Farallon and Stonehill regarding the purchase of the Claims;

p. All communications between Farallon and Stonehill and investors in their respective funds regarding purchase of the Claims or valuation of the Claims;

q. All communications between Seery and Stonehill or Farallon regarding Seery's compensation as the Trustee of the Claimant Trust;

r. All documents relating to, regarding, or reflecting any agreements between Seery and the Oversight Committee regarding compensation;

s. All documents reflecting the base fees and performance fees which Stonehill has received or may receive in connection with management of the Claims;

t. All documents reflecting the base fees and performance fees which Farallon has received or may receive in connection with management of the Claims;

u. All monies received by and distributed by Muck in connection with the Claims;

v. All monies received by and distributed by Jessup in connection with the Claims;

w. All documents reflecting whether Farallon is a co-investor in any fund which holds an interest in Muck; and

x. All documents reflecting whether Stonehill is a co-investor in any fund which holds an interest in Jessup.

BENEFIT OUTWEIGHS THE BURDEN

28. The beneficial value of the requested discovery greatly outweighs any conceivable burden that could be placed on the Respondents. The requested information

also should be readily available because the Respondents have been engaged in the bankruptcy proceedings relating to the matters at issue for several years.

29. The important benefit associated with this requested discovery is also clear – it is reasonably calculated to determine whether the Respondents have unjustly garnered tens of millions of dollars of benefit based upon insider information. If this occurred, the monies received as a result of such conduct are properly subject to a constructive trust and disgorged. This would result in substantial funds available for other creditors, including those creditors in Class 10, which includes HMIT as a beneficiary. This significant benefit, in addition to the value of bringing proper light to the activities of Farallon and Stonehill as discussed in this petition, far outweighs any purported burden associated with requiring Respondents to sit for focused depositions concerning the topics and documents identified in Exhibits A and B.

REQUEST FOR HEARING AND ORDER

30. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on this Petition.

PRAYER FOR RELIEF

31. Petitioner Hunter Mountain Investment Trust respectfully requests that the Court issue an order pursuant to Texas Rule of Civil Procedure 202 authorizing HMIT to take a deposition of designated representatives of Farallon Capital Management, LLC and Stonehill Capital Management, LLC. HMIT additionally requests authorization to

issue subpoenas duces tecum compelling the production of documents in connection with the depositions in compliance with Tex. R. Civ. P. 205, and asks that the Court grant HMIT all such other and further relief to which it may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*
Sawnie A. McEntire
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Attorneys for Petitioner Hunter Mountain Investment Trust

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared Mark Patrick, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

> "My name is Mark Patrick. I am the Administrator of Hunter Mountain Investment Trust, and I am authorized and capable of making this verification. I have read Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition ("Petition"). The facts as stated in the Petition are true and correct based on my personal knowledge and review of relevant documents in the proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054, in the United States Bankruptcy Court in the Northern District of Texas, Dallas Division ."

Mark Patrick

Sworn to and subscribed before me by Mark Patrick on January 20, 2023.

Notary Public in and for
the State of Texas

DEBORAH COLE
Notary ID #134079165
My Commission Expires
November 23, 2026

3116424.1

EXHIBIT "A"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

TO: Farallon Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Farallon Capital Management, LLC ("Farallon") on _____**, 2023 at** _____ **_.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Farallon is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Farallon concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

_____
Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
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Facsimile: (713) 960-7347

Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

_____
Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

Communication. The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon, *you*, and *your*. The terms "Farallon," "you," and "your" shall mean Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill. The term "Stonehill" refers to Stonehill Capital Management, LLC.

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Farallon to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Farallon considered in making any decision to invest in any of the Claims on behalf of itself, Muck, and/or any fund with which Farallon is connected;

b. Whether Farallon conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims;

e. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Muck's Net Asset Value (NAV), as well as all assets owned by Muck;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Farallon and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Farallon and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Farallon and any of the Settling Parties concerning any of the Claims;

m. All communications between Farallon and Stonehill regarding any of the Claims;

n. All communications between Farallon and any investors in any fund managed by Farallon regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Farallon regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Farallon has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Muck in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims;

s. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same;

t. All communications between Farallon and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Muck;

v. the Oversight Board.

u. The sources of funds used by Muck for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Muck;

w. Representations made by Farallon, Muck, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Farallon's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Muck to the Oversight Board;

aa. Farallon's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Muck.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Farallon concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Farallon, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.

5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.

8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.

9. Any and all documents reviewed by Farallon as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Muck.

12. Muck's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Farallon in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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EXHIBIT "B"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

TO: Stonehill Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Stonehill Capital Management, LLC ("Stonehill") on _____**, 2023 at** _____ **_.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Stonehill is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Stonehill concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

_____
Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
State Bar No. 24110325
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One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347

Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

_____
Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

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Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

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conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon. The term "Farallon," refers to Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors,

assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill," "you," and "your." The terms "Stonehill", "you," and "your" shall mean Stonehill Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to Jessup Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Stonehill is a general partner or owns an entities' general partner, or anyone else acting on Stonehill's behalf, now or at any time relevant to the response .

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Stonehill to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Stonehill considered in making any decision to invest in any of the Claims on behalf of itself, Jessup, and/or any fund with which Stonehill is connected;

b. Whether Stonehill conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Stonehill was involved in creating and organizing Jessup in connection with the acquisition of any of the Claims;

e. The organizational structure of Jessup (including identification of all members, managing members), as well as the purpose for creating Jessup, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Jessup's Net Asset Value (NAV), as well as all assets owned by Jessup;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Stonehill and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Stonehill and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Stonehill and any of the Settling Parties concerning any of the Claims;

m. All communications between Stonehill and Farallon regarding any of the Claims;

n. All communications between Stonehill and any investors in any fund managed by Stonehill regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Stonehill regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Stonehill has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Jessup in connection with any of the Claims and any distributions made by Jessup to any members of Jessup relating to such Claims;

s. Whether Stonehill is a co-investor in any fund which holds an interest in Jessup or otherwise holds a direct interest in Jessup and all documents reflecting the same;

t. All communications between Stonehill and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Jessup;

v. the Oversight Board.

u. The sources of funds used by Jessup for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Jessup;

w. Representations made by Stonehill, Jessup, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Stonehill's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Jessup to the Oversight Board;

aa. Stonehill's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Jessup.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Stonehill concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Stonehill, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Farallon, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Stonehill and/or Jessup and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Jessup to acquire any of the Claims.

5. Organizational and formation documents relating to Jessup including, but not limited to, Jessup's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Jessup approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Jessup's NAV.

8. Agreements between Stonehill and Jessup regarding management, advisory, or other services provided to Jessup by Stonehill.

9. Any and all documents reviewed by Stonehill as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Jessup.

12. Jessup's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Stonehill in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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Timothy Miller on behalf of Timothy Miller
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Status as of 1/25/2023 10:01 AM CST

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EXHIBIT 73

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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Tuesday, February 2, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	CONFIRMATION HEARING [1808]
	)	AGREED MOTION TO ASSUME [1624]

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

WEBEX APPEARANCES:

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

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For Acis Capital Management GP, LLC:	Rakhee V. Patel WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250
For UBS Securities, LLC:	Andrew Clubok LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 (202) 637-2200
For Patrick Daugherty:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500
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For James Dondero:	Clay M. Taylor John Y. Bonds, III D. Michael Lynn Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300

APPEARANCES, cont'd.:

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For Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse:	Frances A. Smith ROSS & SMITH, P.C. Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 593-4976
For Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse:	Debra A. Dandeneau BAKER & MCKENZIE, LLP 452 Fifth Avenue New York, NY 10018 (212) 626-4875
For CLO Holdco, Ltd.:	John J. Kane KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261
For Davis Deadman, Todd Travers, and Paul Kauffman:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500

APPEARANCES, cont'd.:

For the United States of America (IRS):	David G. Adams U.S. STATES DEPARTMENT OF JUSTICE, TAX DIVISION 717 N. Harwood Street, Suite 400 Dallas, TX 75201 (214) 880-2432
For Highland CLO Funding, Ltd.:	Rebecca Matsumura KING & SPALDING, LLP 500 West 2nd Street, Suite 1800 Austin, TX 78701 (512) 457-2024
For Crescent TC Investors:	Michael S. Held JACKSON WALKER, LLP 2323 Ross Avenue, Suite 600 Dallas, TX 75201 (214) 953-5859
For the Issuer Group:	Amy K. Anderson JONES WALKER, LLP 811 Main Street, Suite 2900 Houston, TX 77002 (713) 437-1866
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - FEBRUARY 2, 2021 - 9:38 A.M.

THE COURT: Good morning. Please be seated. All right. We are ready to get started now in Highland Capital. We have a confirmation hearing as well as a motion to assume the non-residential real property lease at the headquarters. All right. This is Case No. 19-34054. I know we're going to have a lot of appearances today. I think we're just down to a handful of objections, but I'm nevertheless going to go ahead and get formal appearances from our key parties that we've had historically in this case.

First, for the Debtor team, do we have Mr. Pomerantz and your crew?

MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff Pomerantz, along with John Morris, Ira Kharasch, and Greg Demo, on behalf of the Debtor-in-Possession, Highland Capital.

THE COURT: All right. Good morning. All right. For the Unsecured Creditors' Committee team, do we have Mr. Clemente and others?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matthew Clements; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. I'm actually going to call a roll call for the Committee members who have obviously been very active during this case. For the Redeemer Committee and Crusader Fund, do we have Ms. Mascherin and her team?

(Pause.) Okay. We're -- if -- you must be on mute.

MS. MASCHERIN: Your Honor, I apologize.

THE COURT: Okay. Go ahead.

MS. MASCHERIN: I apologize, Your Honor. I was on mute and could not figure out how to unmute myself quickly. Terri Mascherin; Jenner & Block; on behalf of the Redeemer Committee.

THE COURT: All right. Good morning.

All right. What about Acis? Do we have Ms. Patel and others for the Acis team?

MS. PATEL: Good morning, Your Honor. Rakhee Patel on behalf of Acis Capital Management.

THE COURT: Good morning.

All right. Mr. Clubok, I see you there for the UBS team, correct?

MR. CLUBOK: Yes. Good morning, Your Honor.

THE COURT: Good morning.

All right. For Patrick Daugherty, I think I see Mr. Kathman out there, correct?

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Patrick Daugherty.

THE COURT: All right. Good morning.

All right. What about HarbourVest? Anyone on the line for HarbourVest?

MS. WEISGERBER: Good morning, Your Honor. Erica

Weisgerber for HarbourVest.

THE COURT: All right. Very good.

All right. Well, I'll now, I guess, turn to some of the Objectors that I haven't hit yet. Who do we have appearing for Mr. Dondero this morning?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor of the law firm of Bonds Ellis Eppich Schaefer & Jones appearing on behalf of Mr. Dondero. I have with me, of course, Mr. Dondero, who is in the room with me. Dennis Michael Lynn, John Bonds, and Bryan Assink are also appearing on behalf of Mr. Dondero.

THE COURT: All right. Thank you, Mr. Taylor.

All right. For the Dugaboy Trust and Get Good Trust, do we have Mr. Draper and others?

MR. DRAPER: Yes, Your Honor. This is Douglas Draper on the line.

THE COURT: All right. Good morning.

MR. DRAPER: Good morning, Your Honor.

THE COURT: All right. What about what I'll call Highland Fund, the Highland Funds and Advisors? Do we have Mr. Rukavina this morning, or who do we have?

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina and Julian Vasek for the Funds and Advisors. I can make a full appearance, but it's the parties listed on Docket 1670.

THE COURT: All right. Thank you, Mr. Rukavina.

All right. What about --

MR. HOGEWOOD: Your Honor?

THE COURT: Go ahead.

MR. HOGEWOOD: Your Honor, Lee Hogewood. I'm sorry, Your Honor. Lee Hogewood is also here on behalf of the same parties.

THE COURT: All right. Thank you, sir.

All right. What about NexPoint Real Estate Partners, HCRE Partners?

MS. DRAWHORN: Good morning, Your Honor. Lauren Drawhorn with Wick Phillips on behalf of NexPoint Real Estate Partners, LLC. I'm also here on behalf of the NexPoint Real Estate entities which are listed on Docket 1677, and NexBank, which is -- their objection is 1676.

THE COURT: All right. Thank you.

All right. Let's cover some of the employees. I think I see Ms. Smith out there. Are you appearing for Mr. Ellington and Mr. Leventon?

MS. SMITH: Yes, Your Honor. Frances Smith with Ross & Smith, along with Debra Dandeneau of Baker McKenzie, on behalf of Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse.

THE COURT: All right. Could you spell the last name of your co-counsel from Baker McKenzie? I didn't clearly get

that.

MS. SMITH: Yes, Your Honor. It's Debra Dandeneau, D-A-N-D-E-N-N-A-U [sic].

THE COURT: Okay. Thank you.

All right. CLO Holdco, do we have you appearing this morning?

MR. KANE: Your Honor, John Kane on behalf of CLO Holdco.

THE COURT: Thank you, Mr. Kane.

All right. I know we had a different group of current or former employees -- Brad Borud, Jack Yang -- and some joining parties: Kauffman, Travers, Deadman. Who do we have appearing for those? (Pause.) Anyone? If you're appearing, we're not hearing you. Go ahead.

MR. KATHMAN: Good morning, Your Honor. Jason Kathman. I represent Mr. Deadman, Mr. Travers, and Mr. Kauffman as well.

THE COURT: Okay. Thank you. And I can't remember who represents Mr. Borud and Yang. Someone separately.

MR. KATHMAN: It's Mr. Winikka, Your Honor.

THE COURT: Oh, Mr. Winikka.

MR. KATHMAN: And I haven't scrolled through to see whether he's with -- in the 120 people signed in this morning. But I believe that objection has been resolved. I think Mr. Pomerantz will probably address that later. So Mr. Winikka

may not be appearing.

THE COURT: Okay. All right. Well, anyone for the IRS?

MR. ADAMS: Good morning, Your Honor. David Adams, Department of Justice, on behalf of the United States and its agency, the Internal Revenue Service.

THE COURT: Thank you, Mr. Adams.

For the U.S. Trustee, who do we have appearing this morning? (No response.) I'm not hearing you. If you're trying to appear, you must be on mute. (No response.) All right. Well, I suspect at some point we'll hear from the U.S. Trustee, even though I don't hear anyone now.

At this point, I will open it up to anyone else who wishes to appear who I failed to call.

MS. MATSUMURA: Your Honor, this is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. Thank you.

THE COURT: All right. Thank you, Ms. Matsumura. HCLOF.

Anyone else?

MR. HELD: Your Honor, this is Michael Held with the law firm of Jackson Walker, LLP on behalf of the office landlord, Crescent TC Investors, LP.

THE COURT: All right. Thank you, Mr. Held.

MR. HELD: Thank you, Your Honor.

THE COURT: Okay. Any other lawyer appearances?

All right. Well, again, if there's anyone out there who did not get to appear, maybe we'll hear from you at some point as the day goes on.

All right. Mr. Pomerantz, this is an important day, obviously. How did you want to begin things?

MR. POMERANTZ: So, Your Honor, I have a brief opening to talk about what I plan to do, and a little more lengthy opening, and it'll be come clear. So if I may proceed, Your Honor?

THE COURT: You may.

MR. POMERANTZ: Your Honor, we're here to request that the Court confirm the Debtor's Fifth Amended Plan of Reorganization, as modified. The operative documents before Your Honor are the Fifth Amended Plan, as modified, that was filed along with our pleadings in support of confirmation on January 22nd and the minor amendments that we filed on February 1st.

Here is my proposal on how we can proceed this morning. I would intend to provide the Court with an opening statement that would last approximately 20 minutes. And then after any other party who desires to make an opening statement, I would propose that the Debtor put on its evidence that it intends to rely on in support of confirmation. The evidence consists of the exhibits that the Debtor filed with its witness and

exhibit list on January 22nd and certain amendments that we filed yesterday.

We would also put on the testimony of the following witnesses: Jim Seery, the Debtor's chief executive officer, who Your Honor is very familiar with, and also a member of Strand's board of directors; John Dubel, a member of Strand's board of directors; and Mark Tauber, a vice president with Aon Financial Services, the Debtor's D&O broker.

We have also submitted the declaration of Patrick Leatham, who is with KCC, the Debtor's balloting agent. And we don't intend to put Mr. Leatham on the stand, but he is available on the WebEx for cross-examination, to the extent necessary.

I propose that I would leave the bulk of my argument, which includes going through the Section 1129 requirements for plan confirmation, as well as responding to the remaining outstanding objections, until my closing argument.

With that, Your Honor, I will pause and ask the Court if Your Honor has any questions before I proceed.

THE COURT: I do not have questions, so your method of going forward sounds appropriate. You may go ahead.

MR. POMERANTZ: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: As I indicated, Your Honor, we stand here side by side with the Creditors' Committee asking that the Court confirm the Debtor's plan of reorganization.

As Your Honor is well aware, this case started in December in -- October 2019, was transferred to Your Honor's court in December 2019, and has been pending for approximately 15 months.

On January 9, 2020, I stood before Your Honor seeking the approval of the independent board of directors of Strand, the general partner of the Debtor, pursuant to a heavily-negotiated agreement with the Committee. And as the Court has remarked on occasions throughout the case, the economic stakeholders in this case believed that the installation of a new board consisting of highly-qualified restructuring professionals and a bankruptcy judge, a former bankruptcy judge, was far more attractive than the alternative, which was appointment of a trustee. And upon approval of the settlement, members of the board -- principally, Mr. Seery -- testified that one of the board's goals was to change the culture of litigation that plagued Highland in the decade before filing and threatened to embroil the Debtor in continued litigation if changes were not made.

And as Your Honor is well aware, the last 14 months have not been easy. The board took its role as an independent fiduciary extremely seriously, much to the consternation of the Committee at times, and more recently, to the consternation of Mr. Dondero and his affiliated entities.

And what has the Debtor, under the leadership of the

board, been able to accomplish during this case? The answer is a lot more than many parties believed when the board was installed.

The Debtor reached a settlement with the Redeemer Committee, resolving disputes that had been litigated for many years, in many forums, and that resulted in an arbitration award that was the catalyst for the bankruptcy filing.

Participating in a court-ordered mediation at the end of August 2020 and September, the Debtor reached agreement with Acis and Josh Terry. The Court is all too familiar with the years of disputes between the Debtor and Acis and Josh Terry, which spanned arbitration proceedings and an extremely combative Chapter 11 that Your Honor presided over.

The Debtor next reached an agreement with HarbourVest regarding their assertion of over $300 million of claims against the estate. The HarbourVest litigation stemmed from its investment in the Acis CLOs and would have resulted in complex, fact-intensive litigation which would have forced the Court to revisit many of the issues addressed in the Acis case.

And perhaps most significantly, Your Honor, the Debtor was able to resolve disputes with UBS, disputes which took the most time of any claim in this case, through a contested stay relief motion, a hotly-contested summary judgment motion, and a Rule 3018 motion.

While the Debtor and UBS hoped to file a 9019 motion prior to the commencement of the hearing, they were not able to do so. However, I am now in a position to disclose to the Court the terms of the settlement, which is the subject of documentation acceptable to the Debtor and UBS. The settlement provides for, among other things, the following terms:

UBS will receive a $50 million Class 8 general unsecured claim against the Debtor.

UBS will receive a $25 million Class 9 subordinated general unsecured claim against the Debtor.

UBS will receive a cash payment of $18.5 million from Multi-Strat, which was a defendant and the subject of fraudulent transfer claims.

The Debtor will use reasonable efforts to assist UBS to collect its Phase I judgment against CDL Fund and assets CDL Fund may have.

The parties will also agree to mutual and general releases, subject to agreed carve-outs.

And, of course, the parties will not be bound until the Court approves the settlement pursuant to a 9019 motion we would hope to get on file shortly.

I am also pleased to let the Court know -- breaking news -- that this morning we reached an agreement to settle Patrick Daugherty's claims. I would now like to, at the request of

Mr. Kathman, read into the record the Patrick Daugherty settlement.

Under the Patrick Daugherty settlement, Mr. Daugherty will receive a $750,000 cash payment on the effective date. He will receive an $8.25 million general unsecured claim, and he will receive a $2.75 million Class 9 subordinated claim.

The settlement of all claims against the Debtor and its affiliates -- and affiliates will be defined in the documents -- with the exception of the tax claim against the Debtor, Mr. Dondero, and Mr. Okada -- and for the avoidance of doubt, except as I describe below, nothing in the settlement is intended to affect any pending litigation Mr. Daugherty has against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc Katz, Michael Hurst, and Hunton Andrew Kurth.

Mr. Daugherty will release the Debtor and its affiliates and current employees for all claims and causes of action, except for the agreements I identify below, and dismiss all current employees as to pending actions. We believe this only applies to Thomas Surgent and no other employee is implicated.

Mr. Surgent and other employees, including but not limited to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon, and Matt Diorio, will receive releases similar to the covenant in Paragraph 1D of the Acis settlement agreement, which essentially provided the release would go away if they assisted anyone in pursuing claims against Mr. Daugherty.

Highland and the above-mentioned parties will accept service of any subpoenas and acknowledge the jurisdiction of the Delaware Chancery Court for the purposes of accepting any subpoenas. And for the avoidance of doubt, Highland will accept service on behalf of the employees only in their capacity as such.

Highland will also use material -- will use reasonable efforts at no material cost to assist Daugherty in vacating a Texas judgment that was issued against him. We've also looked at a form of the motion and believe we have agreed on the form of the motion.

Highland, its affiliates, and current employees will covenant and agree they will not pursue or seek to enforce the injunction and the Texas judgment against Daugherty.

And lastly, Daugherty will not be able to settle any claims for negligence or other claims that might be subject to indemnification by the Debtor or any successor.

Accordingly, Your Honor, other than the claims of Mr. Dondero and his related entities, and the unliquidated claims of certain employees, substantially all claims have been resolved in this case, a truly remarkable achievement.

Separate and apart, Your Honor, from the work done resolving the claims, the Debtor, under the direction of the independent board, has worked extremely hard to develop a plan of reorganization.

After the independent board got its bearings, it started to work on various plan alternatives. And the board received a lot of pressure from the Committee to go straight to a plan seeking to monetize assets like the one before Your Honor today. However, the board believed that before proceeding to do so and go down an asset monetization path, it should adequately diligence all alternatives, including a continuation of the current business model, a reorganization sponsored by Mr. Dondero and his affiliates, a sale of the Debtor's assets, including a sale to Mr. Dondero.

In June 2020, plan negotiations proceeded in earnest, and the Debtor started to negotiate an asset monetization plan with the Committee, while still pursuing other alternatives.

Preparation of an asset monetization plan is not typically a complicated process. However, creating the appropriate structure for a business like the Debtor's was extremely complicated, because of the contractual, regulatory, tax, and governance issues that had to be carefully considered.

At the same time the Committee negotiations were proceeding down that path, Mr. Seery continued to spend substantial time trying to negotiate a grand bargain plan with Mr. Dondero. It is not an exaggeration to say that over the last several months Mr. Seery has dedicated hundreds of hours towards a potential grand bargain plan.

And why did he do it? Because he has always believed that

a global restructuring among all parties was the best opportunity to fully and finally resolve the acrimony that continued to plague the Debtor.

Notwithstanding Mr. Seery's and the independent board's best efforts, they were not able to reach consensus on a grand bargain plan, and the Debtor filed the plan, the initial plan, on August 12th, which ultimately evolved into the plan before the Court today.

The Court conducted an initial hearing on the disclosure statement on October 27th, and then ultimately approved -- the Court approved the disclosure statement at a hearing on November 23rd.

While the Debtor continued to work towards resolving issues with the Committee with the filed plan, Mr. Dondero, beginning to finally see that the train was leaving the station, started to do whatever he could to get in the way of plan confirmation.

He objected to the Acis settlement. When his objection was overruled, he filed an appeal.

He objected to the HarbourVest settlement. When his objection was overruled, he had Dugaboy file an appeal.

He started to interfere with the Debtor's management of its CLOs, stopping trades, refusing to provide support, and threatening Mr. Seery and the Debtor's employees.

He had his Advisors and Funds that he owned and controlled

file motions that Your Honor said was a waste of time.

He had those same Funds and Advisors threaten to terminate the Debtor as a manager, in blatant violation of the Court's January 9, 2020 order.

His conduct was so egregious that it warranted entry of a temporary restraining order and preliminary injunction against him. And of course, he has appealed that ruling as well.

But that was not all. He brazenly threw out his phone, in what the Court has remarked was spoliation of evidence, and he violated the TRO in other ways, actions for which he will answer for at the contempt hearing scheduled later this week.

And, of course, he and his pack of related entities have filed a series of objections. We have received 12 objections to the plan, Your Honor, excluding three joinders. And as I mentioned, we have been pleased to report that we've been able to resolve six of them: those of the Senior Employees, those of Patrick Daugherty, those of CLO Holdco, those of the IRS, those of Texas Taxing Authorities, and those of Jack Young and Brad Borud.

The CLO Holdco objection was withdrawn in connection with the settlement reached with them in connection with the preliminary injunction hearing that the Court heard -- started to hear last week.

The Taxing Authorities' objections have been resolved by the Debtor agreeing to make certain modifications to the plan

that were included in our filing yesterday and to include certain provisions in the confirmation order to address other concerns.

The group of employees who are referred to as the Senior Employee are comprised of four individuals -- Frank Waterhouse, Thomas Surgent, Scott Ellington, and Isaac Leventon -- although Mr. Ellington and Mr. Leventon are no longer employed by the Debtor.

On January 22nd, Your Honor, we filed executed stipulations with Frank Waterhouse and Thomas Surgent. These stipulations were essentially the Senior Employee stipulations that were referred to in the plan and the disclosure statement.

And as part of those stipulations, the Debtor, in consultation with and agreement from the Committee, agreed to certain modifications of the prior version of the Senior Employee stipulation with both Mr. Waterhouse and Mr. Surgent that effectively reduced the compensation they needed to provide for the release from 40 percent to five percent of their claims.

The Debtor and the Committee believed the resolution with Mr. Surgent and with Mr. Waterhouse was fair, given the importance of these two people to the transition effort and the increased reliance upon them that the Debtor would have with the departure of Mr. Ellington and Mr. Leventon. And as

a result of that agreement, Your Honor, on January 27th, Mr. Waterhouse and Mr. Surgent withdrew from the Senior Employee objection.

Subsequently, we reached agreement with Mr. Ellington and Mr. Leventon to resolve the objections they raised with confirmation. And at Ms. Dandeneau's request, I would like to read into the record the agreement reached with both of them, and I know she will correct me if I get anything wrong.

THE COURT: Okay.

MR. POMERANTZ: Among other things, Mr. Ellington and Mr. Leventon asserted in their objection that they were entitled to have their liquidated bonus claims treated as Class 7 convenience claims under the plan, under their reading of the plan, and their understanding of communications with Mr. Seery. The Debtor disputed the entitlement to elect Class 7 based upon the terms of the plan, the disclosure statement, and applicable law. But as I said, the parties have resolved this dispute.

Mr. Ellington asserts liquidated bonus claims in the aggregate amount of $1,367,197, which, to receive convenience class treatment under anybody's analysis, would have had to be reduced to a million dollars.

Mr. Leventon asserts a liquidated bonus claim in the amount of $598,198.

If Mr. Ellington and Mr. Leventon were entitled to be

included in the convenience class, as they claimed, they would be entitled to receive 85 percent of their claim as and when the claims were allowed under the plan.

To settle the dispute regarding whether, in fact, they would be entitled to the convenience class treatment, they have agreed to reduce the percentage they would otherwise be entitled to receive from 85 percent to 70.125 percent. And as a result, Mr. Ellington's Class 7 convenience claim would be entitled to receive $701,250 if allowed, and Mr. Leventon's Class 7 convenience claim would be entitled to receive $413,175.10 if allowed.

Mr. Ellington and Mr. Leventon would reserve the right to assert that a hundred percent of their liquidated bonus claims are entitled to administrative priority, and the Debtor, the Committee, the estate and their successors, would reserve all rights to object.

If anyone did object to the allowance of the liquidated bonus claims and Mr. Ellington and/or Mr. Leventon prevailed in such disputes, then the discount that was previously agreed to -- 85 percent to 70.125 percent -- would go away and they would be entitled to receive the full 85 percent payout as essentially a penalty for litigating against them on their allowed claims and losing.

As an alternative to the estate preserving the right to object to the allowance of Mr. Ellington and Mr. Leventon's

liquidated bonus claims, the Debtor and the Committee have an option to be exercised before the effective date to just agree that both their claims will be allowed, and allowed as Class 7 convenience claims. And if that agreement was reached, then the amount of such liquidated bonus claims, they would receive a payment equal to 60 percent of their allowed convenience class claim.

In exchange, Mr. Ellington and Mr. Leventon would waive their right to assert payment of a hundred percent of their liquidated bonus claims as an administrative expense.

So, under this circumstance, Mr. Ellington would receive an allowed claim of $600,000, which is 60 percent of a million dollars, and Mr. Leventon will receive a payment on account of his Class 7 claim of $358,918.80.

Under both scenarios, Mr. Ellington and Mr. Leventon would preserve their paid time off claims that are treated in Class 6, and they would preserve their other claims in Class 8, largely unliquidated indemnification claims, subject to the rights of any party in interest to object to those claims.

Mr. Ellington will change his vote in Class 8 from rejecting the plan to accepting the plan, and Mr. Leventon would change his votes in Class 8 and Class 7 from rejecting the plan to accepting the plan. And Mr. Ellington and Mr. Leventon would withdraw any remaining objections to confirmation of the plan, and we intend to put this settlement

in the confirmation order.

Your Honor, six objections to the plan remain outstanding. One objection was filed by the Office of the United States Trustee, and the remaining five objections are from Mr. Dondero and his related entities. And I would like to put up a demonstrative on the screen which shows how all of these objections lead back to Jim Dondero.

THE COURT: All right.

MR. POMERANTZ: You see on the top left, Your Honor, there's a box in white that says A through E, which are the five remaining objections. And you can see how they relate. But all of it goes back to that orange box in the middle, Jim Dondero.

These objections, which I will address in my closing argument in detail, are not really focused on concerns that creditors are being treated unfairly, and that's because Mr. Dondero and his entities don't really have any valid claims. Mr. Dondero owns no equity in the Debtor. He owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Mr. Dondero's only other claim is a claim for indemnification. And as Your Honor would expect, the Debtor intends to fight that claim vigorously.

Dugaboy and Get Good have asserted frivolous administrative and unsecured claims, which I will discuss in

more detail later.

Dugaboy does have an equity interest in the Debtor, but it represents eighteen-hundredths of a percent of the Debtor's total equity.

And Mr. Rukavina's clients similarly have no general unsecured claims against the Debtor. Either his clients did not file proofs of claim or filed claims and then agreed to have them expunged. The only claims that his clients assert is a disputed administrative claim filed by NexPoint Advisors.

And the objections aren't legitimately concerned about the post-confirmation operations of the estate, to preserve equity value, how much people are getting, whether Mr. Seery is really the right person to run these estates. That's because Mr. Dondero has repeatedly told the Court that he believes his offer, which doesn't come close to satisfying claims in full in this case, is for fair value and that creditors, who are owed more than $280 million, will not receive anywhere close to the amount of their claims.

Rather, Mr. Dondero and his entities are concerned with one thing and one thing only: how to preserve their rights to continue their frivolous litigation after confirmation against the independent directors, the Claimant Trustee, the Litigation Trustee, the employees, the Claimant Trust Oversight Board, and anyone who will stand in their way. For Mr. Dondero, the decision is binary: Either give him what he

wants, or as he has told Mr. Seery, he will burn down the place.

Your Honor will hear a lot of argument today about how the -- and tomorrow, in closing -- about how the injunction, the gatekeeper, and the exculpation provisions of the plan are not appropriate under applicable law. The Debtor, of course, disagrees with these arguments, and I will address them in detail in my closing argument.

But I do think it's important to focus the Court at the outset on the January 9, 2020 order that the Court entered which addressed some of these issues. This order, which has not been appealed, which was actually agreed to by Mr. Dondero, has no expiration by its terms and will continue post-confirmation, did some things that the Objectors just refuse to recognize and accept.

It approved an exculpation for negligence for the independent directors and their agents. It provided that the Court would be the gatekeeper to determine whether any claims asserted for them -- against them for gross negligence and willful misconduct could be pursued, and if so, provided that this Court would have exclusive jurisdiction to adjudicate those claims. And it prevented Mr. Dondero and his related entities from causing any related entity to terminate any agreements with the Debtor.

I also note, Your Honor, that the Court's July 16, 2020

order approving Mr. Seery as chief executive officer and chief restructuring officer included the same exculpation and gatekeeping provision as contained in the January 29th -- January 9th order.

Your Honor, we have all come too far to allow Mr. Dondero to make good on his promise to Mr. Seery to burn down the place if he didn't get what he wanted. The Debtor deserves better, the creditors deserve better, and this Court deserves better.

That concludes my opening argument, Your Honor.

THE COURT: All right. Thank you. I had one follow-up question about the Daugherty settlement. You did not mention, is it going to be reflected in the confirmation order, is it going to be the subject of a 9019 motion, or something else?

MR. POMERANTZ: It'll be subject to a -- it'll be subject to a 9019 motion, Your Honor.

THE COURT: All right.

MR. POMERANTZ: I apologize for leaving that out.

THE COURT: All right. Thank you. Well, --

MR. KATHMAN: Your --

THE COURT: -- I appreciate that you stuck closely to your 20-minute time estimate.

As far as other opening statements today, I'm going to start with the objections that were resolved. Mr. Kathman, I

see you there. Who will speak on behalf of Patrick Daugherty and the announced settlement?

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Mr. Daugherty.

Mr. Pomerantz correctly recited the bullet points of the settlement that we agreed to in principle this morning. There was one that he did leave off that I do want to make sure that I mention and that it's read into the record. And he read at the top end that Mr. Daugherty does maintain his ability to pursue his 2008 tax refund bonus claim, or tax refund compensation claim. If the Court will recall, there's a contingent liability out there based on how compensation was paid back in 2008 that's the subject of an IRS audit. And so the settlement expressly contemplates that those -- that that claim will be preserved and Mr. Daugherty may pursue that claim. Should the IRS have an adverse ruling and we have to pay money back, we get to preserve that claim.

And so the one thing that is preserved, Your Honor -- and the same way that Mr. Pomerantz read verbatim the words, I'm going to read verbatim the words that we've agreed to: Daugherty maintains and may pursue the 2008 tax refund compensation portion of his claim that is currently a disputed contingent liability. The Debtor and all successors reserve the right to assert any and all defenses to this portion of

the Daugherty claim. The litigation of this claim shall be stayed until the IRS makes a final determination, provided, however, Daugherty may file a motion with the Bankruptcy Court seeking to have the amount of his tax claim determined for reservation purposes as a "disputed claim" under the Debtor's plan. The Debtor and all successors reserve the right to assert any and all defenses to any such motion.

So the Debtor's plan says that they can make estimations for disputed claims. There is not currently something reserving this particular claim, so we wanted to make sure we reserve our rights to be able to have that amount reserved under the Debtor's plan. And the Debtor obviously preserves their ability to object to that.

With that, Your Honor, it is going to be papered up in a 9019, and we'll have some further things to say at the 9019 hearing, but didn't want to derail the Debtor's confirmation hearing this morning.

THE COURT: All right. And --

MR. POMERANTZ: And Mr. Kathman is -- Mr. Kathman is correct. I neglected to mention that provision, but he is -- he read it, and that's agreed to.

THE COURT: All right. And I did not hear anything about Mr. Daugherty's vote on the plan. Is there an agreement to change or a motion to change the vote from no to yes?

MR. KATHMAN: Your Honor, that wasn't, I think,

directly -- and Mr. Pomerantz can correct me if I'm wrong, or Mr. Morris, actually, probably more could -- that wasn't directly addressed, but I think the answer to that is probably they don't need our vote.

THE COURT: Okay.

MR. KATHMAN: I think they have enough votes in that class to carry.

THE COURT: Okay.

MR. KATHMAN: But the answer directly is that that wasn't specifically addressed one way or the other.

THE COURT: All right.

MR. POMERANTZ: That is correct, Your Honor. We would, of course, not oppose Mr. Daugherty changing his vote, but as Your Honor saw in the ballot summary, we are way over the amount in dollar amounts of claims. But if they wanted to change their vote, we wouldn't oppose.

THE COURT: All right. Well, --

MR. KATHMAN: Your Honor, I have -- I have the benefit of Mr. Daugherty. He is on -- I should note, Mr. Daugherty is on the hearing this morning. He just let me know that he is willing to change his vote. If the Debtor were to so make a motion, we're fine changing our vote to in favor of the plan.

THE COURT: All right. All right. Well, we'll get the ballot agent declaration or testimony later. At one time

when I had checked, there was a numerosity problem but not a dollar amount problem. And it sounds like that is no longer an issue, perhaps because of the employee votes, or I don't know.

But, all right. Well, thank you.

MR. POMERANTZ: Your Honor, there is still a numerosity problem.

THE COURT: Okay.

MR. POMERANTZ: There's not a dollar amount problem.

THE COURT: Okay.

MR. POMERANTZ: But we'll address that and cram-down in closing.

THE COURT: All right. Very good.

All right. Well, I want to hear from the -- what we've called the Senior Employee group. Is Ms. Dandeneau going to confirm the announcement of Mr. Pomerantz?

MS. DANDENEAU: Yes, Your Honor. I confirm that Mr. Pomerantz's recitation of the terms to which we've agreed is accurate.

THE COURT: All right. Very good.

All right. I suppose I should circle back to UBS. We've, of course, heard in prior hearings the past few weeks that there was a settlement with UBS, but Mr. Clubok, could I get you to confirm what Mr. Pomerantz announced earlier about the UBS settlement?

MR. CLUBOK: Yes. Good morning again, Your Honor.

Yes, we have reached a settlement, and it's just -- and it's been approved internally at UBS and obviously by the Debtor. It's just subject to the final documentation. And we are working very closely with the Debtor to try to do that as quickly as possible.

THE COURT: All right. Thank you.

All right. Well, let me go, then, to other opening statements. Is there anyone else who at this time wishes to make an opening statement? And, you know, for the pending objectors, please, no more than 20 minutes.

MR. CLEMENTE: Your Honor? Your Honor, if I may, it's Matt Clemente on behalf of the Committee.

THE COURT: Okay.

MR. CLEMENTE: I'd be very brief, but I would like to make some remarks to Your Honor. It'll be less than five minutes.

THE COURT: All right. Go ahead.

MR. CLEMENTE: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

MR. CLEMENTE: Again, for the record, Matt Clemente; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

Your Honor, to be clear, the Committee fully supports confirmation of the Debtor's plan and believes the plan is

confirmable and should be confirmed.

Although it has taken us quite some time to get to this point, Your Honor, and as Mr. Pomerantz referred, the Debtor's business is somewhat complex, the plan is remarkably straightforward, Your Honor, and has only been made complicated by the various objections filed by Mr. Dondero's tentacles.

At bottom, Your Honor, the plan is designed to recognize the reality of the situation that the Committee has continually been expressing to Your Honor, and that is the overwhelming amount of creditors in terms of dollars are litigation creditors, creditors who are here entirely because of the fraudulent and other conduct of Mr. Dondero and his tentacles.

The other third-party creditors, Your Honor, by and large are those collateral to these litigation claims in terms of true trade creditors and service providers.

Recognizing this fact, Your Honor, the plan contains an appropriate convenience class, which, in the Committee's view, provides a fair way to capture a large number of claims and appropriately recognizes the distinction between those claims and the large litigation claims. And the holders of these large litigation claims, including now Mr. Daugherty, have voted in favor of allowing this convenience class treatment.

Your Honor, after distributions are made to the

administrative creditors, the priority creditors, the secured creditors, and the convenience creditors, the remainder goes to general unsecured creditors who will control how this value is realized. These are the large litigation creditors.

Additionally, Your Honor, recognizing the possibility of recovery in excess of general unsecured claims plus interest, and to thwart, from the Committee's perspective, what would have undoubtedly been an argument by one of the Dondero tentacles that the general unsecured creditors could be paid more than they are owed, the plan provides for a contingent interest to kick in after payment in full for interests of all prior claims.

Your Honor, this is the sum and substance of the plan. At bottom, fairly straightforward. And the true creditors, Your Honor, have voted overwhelmingly in favor of the plan. Class 8 has voted to support the plan. Class 7 has voted to accept the plan. And now I believe, with Mr. Daugherty's settlement, one hundred percent in amount of Class 8, non-insider, non-Dondero-controlled or (audio gap) have voted in favor of the plan.

To be clear, as Your Honor pointed out and as Mr. Pomerantz referenced, there is not numerosity in Class 8, Your Honor, but that is driven, as Your Honor will see, from approximately 30 no-votes of current employees who the Committee believes are not owed any amounts and therefore they

will not be receiving payments under the plan, yet they voted against the plan. So although we have a technical cram-down plan from the Class 8 perspective, Your Honor, the plan voting reflects the reality that the economic parties in interest overwhelmingly support the plan.

So, Your Honor, cutting through the machinations of the Dondero tentacles, we do have a fairly straightforward plan and a plan that the Committee believes is confirmable and should be confirmed.

Your Honor, since I've been in front of you for over a year now, I've referred to the goals of the Committee in this case, and the goals are straightforward in terms of expressing them but can be difficult in reality to implement them. The Committee's goals have been two-fold: to maximize the value of the estate and therefore the recoveries for its constituency, and to disentangle from the Dondero (audio gap).

As with all things Highland, although these goals are straightforward, they're remarkably difficult to achieve, given the Dondero tentacles. However, the Committee strongly believes the plan achieves these two goals.

First, the plan provides a credible path to maximize recovery with Mr. Seery, who has gotten to know the assets and who has performed skillfully and credibly throughout this very difficult process. It is a difficult set of assets and complex set of assets, as Your Honor knows very well.

To be sure, there is uncertainty associated with the Debtor's projections, but that is inherent in the nature of the assets of the Debtor, and frankly, is inherent in the nature of projections themselves. And Mr. Dondero and his tentacles will point to the downside, potentially, in those projections, but the Court will be reminded that there is also potential upside in those projections, an upside that would inure to the benefit of the general unsecured claims.

Second, Your Honor, although it is seemingly impossible to free yourself from the Dondero web until every single one of the 2,000 barbed tentacles is painfully removed, if that's even possible, Your Honor, the Reorganized Debtor, the Claimant Trust, the Claimant Trustee, the Litigation Sub-Trust, the Litigation Trustee, and the Oversight Board construct and mechanisms is a structure that the Committee believes provides the creditors with the best possibility to do so, and that is to deal with what will undoubtedly be a flurry of attacks from Mr. Dondero and his tentacles.

This is a virtual certainty, Your Honor. The creditors have seen this movie before and Your Honor has seen this movie before. They have seen Mr. Dondero make and break promises. They have seen Mr. Dondero attempt to bludgeon adversaries into submission in order to accept his offerings, and they have heard Mr. Dondero say that which he has said in this court during the preliminary injunction hearing --

specifically, that the Debtor's plan "is going to end up in a myriad of litigation."

The creditors are steeled in their will to be rid of Mr. Dondero, and they're confident in this structure to do so.

To be clear, Your Honor, what is before the Court today for confirmation is the Debtor's plan, not some other plan that no one supports other than Mr. Dondero and his tentacles. The question isn't whether Mr. Dondero has a better proposal -- and footnote, Your Honor, the answer is he does not, both from a qualitative and quantitative perspective -- but whether the plan before the Court is in the best interest of creditors and should be confirmed. The Committee strongly believes it is, and should, and all the Committee members support confirmation of the Debtor's plan.

Recognizing Mr. Dondero's behavior, Your Honor, and threats regarding how he will behave in the future, there are certain provisions in the plan that are of critical importance to the creditors. Of course, all provisions in the plan are extremely important, Your Honor, but as Mr. Pomerantz referenced, the creditors need the gatekeeper, exculpation, and injunction provisions.

The reason is obvious, and is emphasized by the supplemental objection filed just yesterday by some of Mr. Dondero's tentacles -- namely, the Dugaboy and the Get Good Trusts. And I quote, Your Honor: "It is virtually certain

that, under the Debtor's plan, there will be years of litigation in multiple adversary proceedings, appeals, and collection activities, all adding substantial uncertainty and delay."

Additionally, Your Honor has seen from the proceedings in this case and has expressed frustration at numerous times at the myriad and at times baseless and borderline frivolous and out of touch with reality suits and objections and proceedings that the Dondero tentacles bring. The creditors need the gatekeeper, exculpation, and injunction provisions to preserve and protect value. And the record, I think, to this point is clear, and will be further made clear through the confirmation proceedings, that the protections are appropriate and entirely within this Court's authority to grant.

In sum, Your Honor, the Committee fully supports confirmation of the plan. The Committee believes it is confirmable and should be confirmed, and two classes of creditors and the overwhelming amount of creditors in terms of dollars agree.

That's it, Your Honor. Unless you have questions for me, I have nothing further at this time.

THE COURT: All right. Thank you, Mr. Clemente.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: All right. Who else wishes to be heard?

MR. DRAPER: Your Honor, this is Douglas Draper. I'd

like to be heard. I have a few -- I'll take five minutes, at most --

THE COURT: All right. Go ahead.

MR. DRAPER: -- and just focus on a few things.

OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY INVESTMENT TRUST

MR. DRAPER: I'm going to focus my opening remarks on the releases, the exculpations, and channeling injunctions in the plan. I'm not waiving my other objections, but, rather, trying not to subject the Court to hearing the same argument from multiple lawyers.

The good thing about the law is that it's absolute in certain respects. It does not matter who is asserting a legal protection, the law applies it. For example, a serial killer is entitled to a *Miranda* warning and a protection against unlawful search and seizure. The law does not allow tainted evidence or an unlawful admission into evidence, notwithstanding the fact that the lack of admission of that evidence may lead to the freeing of that serial killer.

Today, you must make an independent evaluation as to whether the plan complies with 1129 and applicable law. The decision must be made notwithstanding the fact that it is being made by a Dondero entity. It's not being -- it must be applied notwithstanding the fact that it's being made by me.

We contend that the plan does not meet the hurdle and

confirmation should be denied, notwithstanding the fact that the infirmity with the plan is asserted by me and notwithstanding the fact that Mr. Pomerantz and the unsecured creditors have overwhelming support.

We all know 1141, the Barton Doctrine, and 544 -- 524 provide injunctions and protections for certain parties associated with the Debtor. Had the plan merely referenced these sections and stated that the injunction, et cetera, shall not exceed those allowed pursuant to *Pacific Lumber*, I would not be making this argument.

Instead, we see a plan that has a definition of Exculpated Parties, Released Parties, Related Parties, that exceed the protections afforded by the Bankruptcy Code, the Barton Doctrine, and 524.

We have a grant of jurisdiction and oversight that exceeds that allowed under *Craig's Store*, the *Craig's Store* line of cases.

We have releases of claims against non-debtor parties, such as Strand, who is, under the Bankruptcy Code, under 723, liable for the debts of the Debtor.

The plan, with its expansive releases, released parties, grant of injunctions, exculpations and channeling injunctions, are impermissible under Fifth Circuit case law. And I would ask the Court to look closely at those definitions, who is -- who the law allows to be exculpated and released and who the

law specifically prohibits being exculpated and released, and, in fact, apply the *Pacific Lumber* line of -- case, as well as 524 and the Bankruptcy Code when you look at these issues.

Notwithstanding the overwhelming so-called support by the creditors at issue, the law must be applied, and it must be applied pursuant to what the Fifth Circuit requires.

THE COURT: All right. Thank you, Mr. Draper.

Other Objectors with opening statements?

MR. RUKAVINA: Your Honor, Davor Rukavina. Briefly?

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, I represent various funds, including three of which have independent boards. The Debtor manages more than $140 million of those funds, and the Debtor manages around a billion dollars in CLOs.

Whether I am a tentacle of Mr. Dondero or not -- I'm not, since there's an independent board -- the fact remains that the Debtor wants to manage these assets and my clients' money post-assumption and post-confirmation with effective judicial immunity. So our fundamental problem with this plan is the assumption of those contracts under 365(c) and (b). I think we'll have to wait for the evidence to see what the Debtor proposes and has, and I will reserve, I guess, the balance of my arguments on that to closing, depending on what the evidence is.

But I don't want the Court to lose sight of the fact that what the Debtor wants to do is, in contravention of our desires, continue managing our assets post-confirmation, even as it liquidates, just to make a buck. It's our money, Your Honor, and whether we're Dondero or not, we're a couple hundred million, probably, or more, of third-party investment professionals, pension funds, et cetera, and we should not be all tainted without evidence as a tentacle of someone whom, I'll remind everyone here, built a multi-billion dollar company and made a lot of money for people.

The second objection, Your Honor, goes to the Class 8 rejection. It sounds like there's still a problem with the number of creditors, even though certain creditors have switched their votes. That raises now the fair and equitable standard, together with the undue discrimination and the absolute priority rule. I think we'll have to let the evidence play out, and I'll reserve the balance of my closing or the balance of my remarks to closing on that issue.

The third issue, Your Honor, is the same exculpation and release and injunction provisions that Mr. Draper raised. Those are legal matters that I'll discuss at closing, but I do note that the Debtor purports to prevent my clients from exercising post-assumption post-confirmation rights, period. And that's just inappropriate, because if the Debtor wants the benefits of these agreements, well, then of course it has to

comply with the burdens. And to say *a priori* that anything that my clients might do post-confirmation would be the result of a bad-faith Mr. Dondero strategy, there's no basis for that and that's not the basis on which my clients' rights in the future, when there is no bankruptcy estate and there is no bankruptcy jurisdiction, can be enjoined.

And the final point, Your Honor, entails this channeling injunction. I'll talk about it during closing. It is inappropriate under 28 U.S.C. 959. This is not a Barton Doctrine trustee issue, this is a debtor-in-possession, and a channeling injunction, the Court will have no jurisdiction post-confirmation.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Does Mr. Dondero's counsel have an opening statement?

MR. TAYLOR: I do, Your Honor. I'll keep it brief. This is Clay Taylor on behalf of Mr. Dondero.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

MR. TAYLOR: Your Honor, the plan is clear in some respects, and I'm not going to belabor these points, as other objecting counsel have already addressed this. But the plan does provide for non-debtor releases, and it provides for non-debtor releases for parties beyond that which is allowed by *Pacific Lumber* and under the Code.

It also provides for exculpations of non-debtor parties in excess of that which is allowed under the Code and applicable case law.

Finally -- or, not finally, but third, it requires this Court to keep a broad retention of post-confirmation jurisdiction that could go on for years, and that is improper.

Finally, it requires the parties to submit to the jurisdiction of this Court via a channeling injunction, which we believe is beyond that which is allowed under applicable Fifth Circuit precedent.

What is clear, what the evidence will show -- and I thought it was interesting that none of the proponents of plan confirmation ever talk about what the evidence is going to show. They testified a lot before Your Honor, but they didn't ever talk about what the evidence would show. What the evidence will show is this plan was solicited via a disclosure statement that told all the unsecured creditors, we project that you're going to receive 87 cents on the dollar on your claim.

About two months later, and this was Friday of this past week, they changed those projections, and those projections then showed unsecured creditors, under a plan analysis, that they were going to receive 62 cents on the dollar. That is in contrast to the liquidation analysis that had been prepared just two months prior showing that, under a hypothetical

Chapter 7 liquidation analysis, that the unsecured creditors would receive 65 cents on the dollar. Obviously, 62 cents is less than 65 percent.

Realizing they had a problem, I guess, over the weekend, they changed last night, the night before confirmation, and sent us some new projections that now show that the unsecured creditors under a plan would receive 71 cents on the dollar.

Your Honor, what the evidence will show, and it is Highland's burden to show this, is that -- that they meet the best interests of the creditors. And part of that is that they will do better under a plan rather than under a hypothetical Chapter 7.

Quite simply, they don't have the evidence, nor have they done the analysis to be able to prove that to this Court.

What the evidence will also show is clear is that Mr. Seery, under the plan analysis, is scheduled to receive at least $3.6 million over just the first two years of this plan if it doesn't go any further. And that's just for monthly payouts of $150,000 per month. That's not including a to-be-agreed-upon success fee structure, which hasn't been negotiated yet. And if it hasn't been negotiated yet, it can't be analyzed yet to see if those costs would exceed their benefits and therefore drive the return down such that a hypothetical Chapter 7 trustee could do better.

There is also going to be additional costs for the

Litigation Trustee and the fees that they are going to charge. There's going to be an Oversight Committee, and those fees are also to be negotiated. There's also U.S. Trustee fees, which Mr. Seery tells us that he has calculated within the liquidation and plan analysis numbers, albeit both myself and Mr. Draper, as the evidence will show, have asked for the rollups that come behind the liquidation and plan analysis in each instance of the three iterations that have been done in two months, and we have been denied that information. That evidence is not going to come in before this Court, and without that rollup information, this Court can't make an independent verification that this meets the best interests of the creditor and better than a hypothetical Chapter 7 trustee.

What the evidence will also show, make an assumption that, under a plan analysis, that Mr. Seery will be able to generate higher returns on the sale of the assets of the Highland debtor and its subsidiaries, to the neighborhood of $60 million higher. There is no independent verification of this. There has been no due diligence done. It was merely an assumption done by Mr. Seery and his advisors, and we submit that they will not have the evidence to show that they can beat a Chapter 7 trustee.

This Court does have an alternative before it. There is an alternative plan that has been filed under seal. The Court is aware of it. And it guarantees that creditors will receive

at least 65 cents on the dollar. Moreover, those claims are guaranteed -- and they're going to be secured that they will be paid that money.

MR. POMERANTZ: Your Honor, this is under -- this is under seal. And I never interrupt somebody's argument, but this plan is under seal for a reason, Your Honor, and I object to any description of the terms of a plan that's not before Your Honor and is under seal.

THE COURT: Okay. I sustain that objection.

MR. TAYLOR: Your Honor has a means to cut the Gordian knot of the litigation and appeals before it and to ensure that there is certainty for creditors. It would massively reduce the administrative fee burn that is contemplated under the proposed plan before the Court. As I've mentioned, it's at least $3.6 million just in monthly fees for Mr. Seery alone. All of the rest of the fees are yet to be determined and to be negotiated. I don't see how any analysis could have been done regarding the administrative fee burn that is going to happen over the two years and potentially much further as this case draws on.

For those reasons alone, Your Honor, we believe that the plan confirmation should be denied and this Court should look at the alternatives before it.

MR. KATHMAN: Can I say something before --

MR. TAYLOR: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Have I missed any Objectors?

MR. KATHMAN: Your Honor?

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Okay. Ms. --

MR. KATHMAN: Your Honor, if I could spend just one minute, and I -- we -- I -- we filed a joinder on behalf of Mr. -- or, Jason Kathman on behalf of Davis Deadman, Todd Travers, and Paul Kauffman.

THE COURT: Uh-huh.

OPENING STATEMENT ON BEHALF OF DAVIS DEADMAN, TODD TRAVERS, AND PAUL KAUFFMAN

MR. KATHMAN: Mr. Pomerantz had noted, I think, at the front end that the Debtor amended their plan that resolved those objections. I just want to say for the record that those had been resolved.

And with that, Your Honor, may I be dismissed?

THE COURT: Yes, you may. Thank you.

MR. KATHMAN: Thank you, Your Honor.

THE COURT: All right. Was Ms. Drawhorn speaking up to make an opening statement?

MS. DRAWHORN: Yes.

THE COURT: Go ahead.

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF THE NEXPOINT PARTIES

MS. DRAWHORN: Just very briefly, Lauren Drawhorn on behalf of NexPoint Real Estate Partners, the NexPoint Real Estate entities, and NexBank.

Just a very brief opening. Just wanted to note that it seems that the Debtor's and the Committee's position seems to be if there's some way, any way, to connect an entity to Mr. Dondero, then they don't need to perform any true evaluation of potential claims or that party's rights or their concerns, and that results in ignoring not only the merits of many claims but also the basic requirements of due process and the statutes, the Bankruptcy Code, and the case law.

We filed objections that were focused largely on the injunctions and the releases, and then also the proposed subordination provisions.

Two of my clients, one of them has a proof of claim, and while it is being disputed, that claim is out there and should get -- be entitled to be pursued and defended, and many of the injunctions appear to prevent my client from doing so.

Similarly, it was mentioned that NexBank, in the demonstrative, had a terminated service agreement, but there's periods of time for which no services were provided but payment was made, and that's a potential admin claim that has been raised. And the injunction, again, appears to prevent my clients from pursuing these claims.

So I think, despite the general response to any connection to Dondero means there's no merit, that's not what we're here for today. We need to really look at the merits of all potential claims and all -- the rights of all parties and the -- how the injunction and release provisions prevent that and how they don't comply with the required law.

And, of course, we join in with many of the other objections, but that's my main point for the opening today.

THE COURT: All right. Thank you.

All right. I think I have covered all of the at least pending objections except the U.S. Trustee. I'll check again to see if someone is out there for the U.S. Trustee. (No response.) All right. If you're there, we're not hearing you. You're on mute.

Okay. Any other attorneys out there who wish to make an opening statement?

All right. Well, I'll turn back to Mr. Pomerantz. You may call your first witness.

MR. POMERANTZ: Okay. I will turn the virtual podium over to my partner, John Morris, who will be putting on our witnesses.

THE COURT: All right. Mr. Morris, you may call your first witness.

MR. MORRIS: Good morning, Your Honor. John Morris from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

Can you hear me okay?

THE COURT: I can.

MR. MORRIS: Okay. Thank you very much.

The Debtor calls James Seery as its first witness.

THE COURT: All right. Mr. Seery, if you could say, "Testing, one, two," please.

MR. SEERY: Testing, one, two.

THE COURT: All right. Hmm, I've not picked up your video yet. Let's try it again.

MR. SEERY: Testing, one, two. Testing.

MR. MORRIS: We have the audio.

THE COURT: We have the audio.

MR. SEERY: Oh.

MR. MORRIS: There we go.

THE COURT: There you are.

MR. SEERY: The video should be working.

THE COURT: All right.

MR. POMERANTZ: Yeah. Actually, one -- Your Honor, one thing before we start. We have Patrick Leatham from KCC. He is prepared to sit on the line for the whole day until his time comes. I would just like to know if anyone intends to cross-examine him or object to his declaration. Because if they don't, we could excuse Mr. Leatham.

THE COURT: All right. What about that? Anyone want to cross-examine the balloting agent?

MR. RUKAVINA: Your Honor, Davor Rukavina. I do not. If the Debtor would just state, with the change of votes in Class 8, what the final tally is, I see no reason to dispute that, and then we can dismiss this gentleman. But I do think that we should all know, with the change of votes, what it now is.

THE COURT: All right.

MR. POMERANTZ: We will -- we will work on that, Your Honor, with the changes as a result of the settlements today, and including Mr. Daugherty's client. We can get that information sometime today.

THE COURT: All right. So, Mr. Rukavina, do you agree that he can be excused with that representation, or do you want --

MR. RUKAVINA: Yes, Your Honor.

THE COURT: Okay. All right. So, it's Mr. Leatham? You are excused if you want to drop off this video.

All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

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

MR. MORRIS: Thank you, Your Honor.

If I may, I'd like to just begin by moving my exhibits into evidence so that it'll make this all go a little bit smoother.

THE COURT: All right.

MR. MORRIS: And if you'll indulge me just a little patience, please, because the Debtor's exhibits are found in three separate places.

THE COURT: Uh-huh.

MR. MORRIS: And I would just take them one at a time.

First, at Docket No. 1822, the Court will find Debtor's Exhibits A through what I'm referring to as 6Z. Six Zs. So the Debtor respectfully moves into evidence Exhibits A through 6Z on Docket No. 1822.

THE COURT: All right. Are there any objections?

MR. RUKAVINA: Your Honor, I have a number of targeted objections to all of the exhibits. Did I hear Mr. Morris say 6Z?

THE COURT: Yes.

MR. MORRIS: Yes.

MR. RUKAVINA: Or six -- then, Your Honor, I can go through my limited objections, if that pleases the Court.

THE COURT: All right. Go ahead.

MR. RUKAVINA: Your Honor, Exhibit B, a transcript, B as in boy. Exhibit D, an email, D as in dog. Exhibit E as in Edward. Moving on, Your Honor, 4D as in dog. 4E as in Edward.

MR. MORRIS: Slow down, please.

THE COURT: Okay.

MR. RUKAVINA: I'm sorry.

THE COURT: You said 4D as in dog, correct?

MR. RUKAVINA: Then -- yes, Your Honor. Then 4E as in Edward.

THE COURT: Okay.

MR. RUKAVINA: 4G as in George. Your Honor, one, two, three, four, five T. 5T as in Tom. And then, Your Honor, one, two -- 6R. 6S. 6T as in Tom. And 6U as in under. That's it.

THE COURT: All right. Well, Mr. Morris, do you want to carve those out for now and just offer them the old-fashioned way and I can rule on the objections then?

MR. MORRIS: Why don't we do that? I may just deal with it at the end of the case. But subject to those objections, the Debtor then moves into evidence the balance of the exhibits on Docket 1822.

THE COURT: All right. So, for the record, the Court will admit all exhibits at Docket No. 1822 at this time except B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U.

(Debtor's Docket 1822 exhibits, exclusive of Exhibits B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U, are received into evidence.)

THE COURT: All right. Mr. Morris, continue.

MR. MORRIS: Thank you, Your Honor.

Next, at Docket 1866, you'll find Debtor's Exhibits 7A through 7E, and the Debtor respectfully moves those dockets -- documents into evidence.

THE COURT: All right. Any objection? (No response.) Are there any objections?

MR. RUKAVINA: Your Honor, not from -- not from me.

THE COURT: All right. Hearing no objections, the Court will admit all Debtor exhibits appearing at Docket Entry No. 1866.

MR. MORRIS: Thank you, Your Honor.

(Debtor's Docket 1866 exhibits are received into evidence.)

MR. MORRIS: And finally, at Docket 1877, the Court will find Debtor's Exhibits 7F through 7Q, and the Debtor respectfully moves for the admission of those documents into evidence.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, I might have to talk about this with Mr. Morris, but I have 7F as any document entered in the case, 7G as any document to be filed, et cetera. Mr. Morris, am I wrong about that?

MR. MORRIS: I don't have that list in front of me. So I'll reserve on those documents and we can talk about them at a break, Your Honor.

THE COURT: All right.

MR. DRAPER: Your Honor, this is Douglas Draper. I object, and I don't have the number in front of me, it's the liquidation analysis and the plan summary. It's a summary exhibit, and we've not been given the underlying documentation with respect to them. I'd ask Mr. Morris to deal with that separately also.

MR. MORRIS: All right. Well, we're certainly going to be moving that into evidence, so we can deal with that at the time, Your Honor.

THE COURT: Okay. Which documents are they? Which exhibits are those?

MR. DRAPER: I don't have the number in front -- Mr. Morris, do you have the number for that exhibit?

MR. MORRIS: I do, but why don't we just deal with it when I -- when I get into --

THE COURT: Okay.

MR. MORRIS: -- into the testimony?

THE COURT: I just wanted the record clear what I am admitting at this time at Docket Entry No. 1877. Or do you want to just --

MR. MORRIS: Okay.

THE COURT: -- hold all those --

MR. MORRIS: Mr. Rukavina, other than F and G, which you noted, is there any objection to any of the other documents on that witness and exhibit list?

MR. RUKAVINA: Well, I also have H as impeachment/ rebuttal, I as any document offered by any other party. So I would suggest, Mr. Morris, that I have my associate confirm that I have the right -- the right stuff here, and we can take it up maybe during a break. But I have F, G, H, I as so-called catchalls, not any discrete exhibits.

MR. MORRIS: All right. All right, Your Honor. Let's, let's just proceed. We've got -- we took care of Docket No. 1822 and 1866, and the balance we'll deal with at a break, --

THE COURT: All right.

MR. MORRIS: -- unless they come up through testimony.

THE COURT: All right. That sounds good.

MR. MORRIS: Okay. Thank you very much. May I proceed?

THE COURT: You may.

MR. MORRIS: Okay.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery.

A (no response)

Q Can you hear me?

A Apologies. I went on mute. Can you hear me now? I apologize.

Q Yes. Good morning.

MR. MORRIS: So, let's begin, Your Honor, with just a little bit of background of Mr. Seery and how he got involved in the case.

BY MR. MORRIS:

Q Mr. Seery, what's your current position with the Debtor?

A I am the CEO, the CRO -- the chief restructuring officer -- as well as an independent director on the Strand Advisors board of directors.

Q Okay.

MR. MORRIS: Your Honor, I'm going to ask Mr. Seery to describe a bit for his background. For the record, you'll find that Exhibits 6X, 6Y, and 6Z, on the Debtor's exhibit list at Docket 1822, the resumes and *C.V.s* of the three independent members of the board. If Your Honor has any question about their qualifications and their experience, that evidence is already in the record.

THE COURT: Okay.

BY MR. MORRIS:

Q But Mr. Seery, without going into the detail of everything that's on your *C.V.*, can you just describe for the Court generally your professional background, starting, well, with your time as a lawyer?

A I've been involved in the restructuring, finance, investing and managing of assets and banking-type assets for

over 30 years.

I began in restructuring in real estate. Became a lawyer, and was a lawyer in private practice dealing with restructuring and finance for approximately ten years, in addition to time before that on the real estate side.

I joined Lehman Brothers on the business side in 1999, where I immediately began working on the -- with a distress team as a team member investing off the balance sheet, Lehman Brothers assets in various types of distressed financing investments. Bonds, loans, equities. In addition, then I became the head of Lehman's loan business globally. I ran that business for the number of years. Was one of the key players in selling Lehman Brothers to Barclays in a very difficult situation and structure.

After that, joined some of my partners, we formed a hedge fund called RiverBirch Capital, about a billion and a half dollar hedge fund in -- operating in -- globally, but mostly U.S. stressed/distressed assets that we invested in. Oftentimes, though, we would run from high-grade assets all the way down to equities, different types of investors, different types of investments.

Thereafter, I left -- was -- joined Guggenheim. I left Guggenheim, and shortly thereafter became a director at Strand.

Q Prior to acceptance of the positions that you described

earlier, were you at all familiar with Highland or Mr. Dondero?

A Yeah. I was, yes.

Q Can you just describe for the Court how you became familiar with Highland and Mr. Dondero?

A Highland was a customer of Lehman Brothers, and it was -- particularly in the loan business. And the CLO businesses. Highland was run by Mr. Dondero, and I knew of that business through that --

(Interruption.)

MR. MORRIS: Can somebody please put their device on mute?

A VOICE: That's Mr. Taylor.

THE COURT: Mr. Taylor, you were off mute, apparently, for a moment. Make sure you're staying on mute. Thank you.

MR. TAYLOR: Yes. Sorry, Your Honor. I thought we might have a hearsay objection. I wasn't sure what the answer was going to be, so I wanted to be prepared to object.

THE COURT: All right. Thank you.

BY MR. MORRIS:

Q Did you know or meet Mr. Dondero in the course of what you just described?

A Yes, I did. I believe we met once or twice over the years. There was a senior team member who handled the

Highland relationship. He was quite good, quite experienced, and he handled most of the Highland relationship issues. But Highland, we came across a number of times, whether it be in -- I came across a number of times, whether it be in specific investments we had where they would be either a competing party or holding a similar interest, whether they were a customer purchasing loans or securities, whether they were a potential CLO customer where we were structuring some assets for them.

Q Okay. And who are the two other members of the independent board at Strand?

A John Dubel and Russel Nelms.

Q And had you had any personal experience with either of those gentleman prior to this case?

A I knew of Mr. Nelms and his experience as a bankruptcy judge in the Northern District of Texas, and I had worked on one matter with Mr. Dubel, but very, very briefly, while he was the CEO of FGIC, which is a large insurer in the financial insurance space that he was responsible for reorganizing and ultimately winding down.

Q Okay. How did you learn about this particular case? How did you learn about the opportunity or the possibility of becoming an independent director?

A Initially, I was contacted by some of the creditors and asked whether I was interested, and I indicated that I was.

Subsequently, I received a call from the Debtor's representatives as well meeting the counsel as well as the financial advisor as well as specific members of the Debtor's senior management.

Q Do you know how long in advance of the January 9th settlement you were first contacted?

A Probably four, four or five days at the most, but started working immediately at that time because it was a pretty complicated matter and the interview process would be quick because of the hearing date that was coming up.

Q Do you recall the names of any of the creditors who reached out to you?

A I spoke to counsel for UBS. Certainly, Committee counsel. I don't recall if I spoke to anybody from Jenner Block in the initial interview. And then I spoke to representatives from your firm as well as Mr. Leventon and ultimately Mr. Ellington.

Q Did you do any due diligence before accepting the appointment?

A I did, yes.

Q Can you describe for the Court the due diligence you did before accepting your appointment as independent director?

A Well, I got the petition, I read the petition, as well as the first day, as well as the venue-changing motion. In addition, I went through the schedules. Ultimately, I took a

look at and examined the limited partnership agreement of the Debtor, with particular focus on the indemnity provisions. I then sat down with the Committee to get their views as part of the interview process, as well as the Debtor's counsel and Debtor's representatives.

Q Did you -- in the course of your diligence, did you come to an understanding or did you form a view as to why an independent board was being sought at that time?

A Yes, I did.

Q And what view or understanding did you come to?

A There was extreme antipathy from the creditors, as evidenced by the venue motion and the documents around that venue motion.

In addition, in the first day order, or affidavit, you could see the issues related to Redeemer and the length of time that litigation has been gone on, going on.

The creditors became extremely concern with Mr. Dondero having any control over the operations of the Debtor and wanted to make sure that either he was removed from that or that -- and someone else was brought in, or that the case was somehow taken over by a trustee.

Q Did you form any views as to the causes of the Debtor's bankruptcy filing?

A The initial cause was the entry or the soon-to-be-entered order related to the arbitration with Redeemer, but it was

pretty clear from looking at the first day that there was a number of litigations. The bulk of the creditor body was made up of -- on the liquidated side was made up of litigation creditors. And then the other creditors, the Committee members, other than Meta-e, were significant litigation creditors.

MR. MORRIS: Your Honor, I think Mr. Seery was sworn in, but unless -- unless you -- if you think there's a need, I'm happy to have you swear Mr. Seery in again just to make sure his testimony is under oath.

THE WITNESS: I was sworn in.

THE COURT: Yes, I swore him in.

MR. MORRIS: That's what I thought. That's what I thought. Somebody had made the suggestion to me, so I was just trying to make sure, because I didn't want any unsworn testimony here today.

THE COURT: We did.

MR. MORRIS: Okay.

THE COURT: We did.

MR. MORRIS: Thank you. Thank you.

BY MR. MORRIS:

Q Ultimately, sir, just to move this along a little bit, do you recall that an agreement was reached with the UCC and Mr. Dondero and the Debtor concerning governance issues?

A Yes, I do.

Q And did you accept your position as an independent director at Strand as part of that corporate governance settlement?

A That, that was part of the appointment. We -- the independent directors were brought in to take -- really, to take control of the company as independent fiduciaries. And the idea, I think, was that there was a Chapter 7 motion that was about to be filed by the Committee, or at least that was the representation, and the Debtor had a choice, they could either accept the independent directors or they could face the motion.

What actually happened was a little bit more complicated. The creditors and the Debtor agreed on the selection of Mr. Dubel and myself. And then because they couldn't agree on the third member of the independent board, they left it to Mr. Dubel and myself to actually come up with a process, interview candidates, and make that selection, which we did, which ultimately became Mr. Nelms.

Q And did all of this take place during that four- or five-day period prior to January 9th?

A It did, yes.

Q Okay. And let's talk about the makeup of the board. You've identified the other individuals. How would you characterize the skillset and the capability of the individual?

A Well, on paper, I think it's a pretty uniquely-constructed board for this type of asset management business with the diversity of these types of assets and the diversity of issues that we had.

So, former Judge Nelms, obviously skilled in bankruptcy and the law around bankruptcy, but also very skilled in mediation, conflict resolution, and in particular his prepetition or maybe pre-judicial experience in litigation and litigation involving fiduciary duties we thought could be very, very important because of the myriad of interrelated issues that we could see that might arise.

John Dubel is an extremely well-known and respected restructuring professional. He has been dealing these kinds of assignments as an independent fiduciary for, gosh, as long as I can recall, but at least going back 15 to 20 years. He had experience in accounting, but he's also been the leader of these kinds of organizations going through restructuring in many operational type roles, and so he was a perfect fit.

And my experience in both restructuring as well as asset management and investment I think dovetailed nicely with the experience that Mr. Nelms and Mr. Dubel have.

Q Okay. Let's talk for just a moment at a high level of the agreement that was reached. Do you remember that there were several documents that embodied the terms of the agreement?

A Yes, I do.

Q And do you remember one of them was an order that the Court entered on January 9th?
A Yes.
MR. MORRIS: All right. Your Honor, just for the record, and we'll be looking at this, but that would be document Exhibit 5Q as in queen, and that's at Docket No. 1822.
BY MR. MORRIS:
Q Do you remember there was a separate term sheet, Mr. Seery, that was also part of the agreement among the constituents?
A Yes. There were -- I think there were a couple of term sheets and stipulations, but I do recall that there was some very specific term sheets with the terms.
MR. MORRIS: All right. And we'll look at that one as well, Your Honor, but that can be found at Exhibit 5O as in Oscar.
BY MR. MORRIS:
Q And then, finally, do you recall that Mr. Dondero signed a stipulation that was also part of the agreement?
A Yes. That was absolutely key to the agreement for the creditors and perhaps the Court. But it was really -- it needed to be clear that he was signed on to this transaction.
MR. MORRIS: Okay. And we'll look at that as well. That's Exhibit 7Q. And remind me, we'll move that one into

evidence.

BY MR. MORRIS:

Q Did you and the other prospective independent directors actually participate in the negotiation of any aspect of this agreement that you've generally described?

A Absolutely. Although we hadn't been appointed yet, these agreements were going to be the structure with which -- or under which we would come in as independent fiduciaries. They would govern a lot of our relationships. They would provide for the protections that we required and that I required. So they were exceedingly important to me.

Q Can you describe for the Court at a general level your understanding of the overall structure of the corporate governance settlement?

A From a very high level, the settlement was -- Highland Capital Partners is a limited partnership. It's managed by its general partner, Strand Advisors. Although Strand is the GP, its effective interest in Highland is minimal, about .25 percent of the effective partnership interest. But it is the general partner. So it does govern the -- the partnership.

We came in as an independent board that would oversee and control Strand Advisors and thereby, through the general partner position, oversee and control HCMLP, the Debtor.

In addition, the Committee then overlaid what we could do with respect to how we operated the business in the ordinary

course in Chapter 11 with a specific set of protocols that governed certain transactions that we would have to get permission from either the Committee or the Court to engage in.

And in addition, Mr. Dondero, notwithstanding the insertion of the independent board at Strand, also had a set of restrictions around him, because, of course, not only was he the former control entity at Highland and Strand, he also had a hundred percent of the ownership -- indirectly, of course -- of Strand and could have removed the board. So there were restrictions around what he could do with respect to the board. There were also restrictions around what he could do through various entities to terminate contracts and --

Q All right. We'll look at some of those in detail. Did, to the best of your recollection, did Mr. Dondero give up his position as president or CEO of the Debtor?

A He did, yes.

Q And did he nevertheless stay on as an employee of the Debtor and retain a position as portfolio manager?

A He did. At the last second, I believe it was the night before, when we were actually in Dallas preparing for the hearing, but Mr. Ellington raised the concern that if Dondero was removed from not only the presidency but also the portfolio management position, potentially there would be some

agreements that might or might not be subject to Court approval that could be terminated and value would be lost. So this was a very last-second provision. Obviously, the -- as new estate fiduciaries, we didn't want value to be lost instantly for key man or some other reason. And the Committee ultimately, or I guess you'd say reluctantly, agreed to that because we just didn't have time to look at any of -- any such agreements.

MR. MORRIS: All right. Let's -- can we put up on the screen, Ms. Canty, Debtor's Exhibit 5Q?

And this is in evidence, Your Honor. This is the January 9th order.

And can we please go to Paragraph 8?

BY MR. MORRIS:

Q Mr. Seery, you had mentioned just a few minutes ago that there were certain restrictions that were placed on Mr. Dondero. Does Paragraph 8, to the best of your recollection, provide for the substance of at least some of those restrictions?

A It does, yes.

Q And can you just describe for the Court your understanding of the restrictions that were imposed on Mr. Dondero pursuant to Paragraph 8?

A Well, as I recall, when Mr. Ellington came in with the last-minute request, the Committee was extremely upset about

it. We talked about it. Obviously, we, as an independent board that was going to come in, didn't know the underlying contracts and couldn't really render any judgment as to whether there would be value lost. So, the Committee agreed, but they wanted to make sure that Mr. Dondero still reported to -- directly to the board, and if the board asked Mr. Dondero to leave, he would do so.

Q Okay. Just looking at this paragraph, is it your understanding that the scope and responsibilities of Mr. Dondero would be determined by the board?

A Yes.

Q And was it your understanding that Mr. Dondero would serve without compensation?

A Yes.

MR. DRAPER: Objection. Leading, Your Honor.

THE COURT: Overruled.

BY MR. MORRIS:

Q Was it your understanding that Mr. Dondero's role would be subject to the direct supervision, direction, and authority of the board?

A That's, you know, that's what the order says and that's what the agreement was. In practice, that was really going to have to evolve because we were coming in very cold and obviously he'd been there for --

(Interruption.)

THE COURT: All right. Someone needs to put their phone on mute. I don't know who it is.

BY MR. MORRIS:

Q Was it also part of the agreement that Mr. Dondero would (garbled) upon the board's request?

A I think I got you, but yes, that's contained in this paragraph, and Mr. Dondero agreed to that.

THE COURT: All right. Whoever LC is, your phone needs to be put on mute. Okay. Please be sensitive to keeping your device on mute except for Mr. Morris and Mr. Seery.

All right. Go ahead.

BY MR. MORRIS:

Q Do you recall, Mr. Seery, whether there were any restrictions placed on Mr. Dondero's ability to terminate agreements with the Debtor?

A Yes. That was a very specific provision as well.

Q Can we take a look at Paragraph 9 below? Is that the provision that you're referring to?

A That's the provision in the order. I believe there were other agreements -- certainly, discussion around it -- because it was an important provision because it had been borne out of some experience that Acis and Mr. Terry had had in particular. So it was supposed to be broad and prevent both direct and indirect termination of agreements.

Q Okay. And do you know, do you recall that the definition of related entity is contained within the term sheet that you referred to earlier?

A It's a pretty extensive -- I recall the definition not specifically, but it's a pretty extensive definition. It includes any of the entities that he owns, that Mr. Dondero owns, that Mr. Dondero controls, that Mr. Dondero manages, that Mr. Dondero owns indirectly, that Mr. Dondero manages indirectly, and it really covers a wide swath of those entities in which he has interests and control.

MR. MORRIS: All right. Let's see if we could just look at the definition specifically at Exhibit 50 as in Oscar. And if we could just scroll down to the next page.

Now, this was -- this is part of the term sheet that was filed at Docket 354.

BY MR. MORRIS:

Q At Definition I(d), is that the definition of related entity that you were referring to?

A That's correct.

Q Okay. In addition to what you've described, I think you also mentioned that there was a separate stipulation that Mr. Dondero entered into as part of the corporate governance settlement. Do I have that right?

A That's my recollection, yes. And I believe he signed it, and that was a key gating issue to the hearing that we had on

January 9th.

Q And what do you recall about that document as being a key gating issue?

A The key gating issue that I recall is that it had to be signed. And I don't believe it was signed until that very morning.

MR. MORRIS: All right. Can we call up Exhibit 7Q as in queen?

BY MR. MORRIS:

Q All right. Is this the stipulation that you were referring to? We can scroll down to any portion you want.

A I believe that is, yes.

MR. MORRIS: Okay. Can we just scroll down to see Mr. Dondero's signature? Yeah. That's -- okay.

So, that's dated January 9th. This was filed at Docket 338. It's on the Debtor's exhibit list as Exhibit 7Q. And the Debtor would respectfully move Exhibit 7Q into evidence.

THE COURT: Any objection? All right. 7Q is admitted.

(Debtor's Exhibit 7Q is received into evidence.)

MR. MORRIS: Okay. And if we could just scroll up a page or two to the four bullet points. Yeah, right there. A little more.

BY MR. MORRIS:

Q Okay. So, do you see Paragraph 10 contains the

stipulation?
A Yes.
Q And as you recall, Mr. Seery, in the events leading up to the entry of the order approving the settlement, was this one of the documents that was being negotiated among -- among the parties?
A Yes, it was.
Q Okay. You mentioned that there were certain provisions of the January 9th order that were important to you and the other independent directors. Do I have that right?
A Yes.
MR. MORRIS: Let's see if we can back to Exhibit 5Q, please, Paragraph 4.
BY MR. MORRIS:
Q Okay. Paragraph 4, can you tell me what Paragraph -- what Paragraph 4 is and why it was important to you?
A Well, there really were four key, I guess I'll use the term gating items again, for my involvement, and ultimately in discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their involvement in the matter.
Because of the litigious nature of the Highland operations and the expectations we had for more litigation after taking a look at the Acis case, we wanted to make sure that, as independents coming into a situation with really no stake in the particular outcome, other than trying to achieve a

successful reorganization, that we were protected. So, number one, I looked at the limited partnership agreement. I wanted to make sure that the LPA contained broad and at least standard indemnification provisions and that they would apply to the board.

Number two, because -- that then requires you to look at the indemnification provisions at Strand, because you're a director of Strand, the GP. So then we looked at those. I took a close examination of those. They looked okay, except Strand didn't have any assets other than its equity interest in Highland, and if that equity interest turned out to be zero, that indemnity wouldn't be very valuable.

So I wanted to make sure that Highland, the Debtor, guaranteed the indemnity (garbled) on a postpetition basis, so that if there were a failure of D&O, which I'll get to in a second, or it wasn't enough, that we would have a senior claim in the case, an admin claim in the case.

I then, of course, wanted to make sure that we had D&O insurance. This was very difficult to get, because, frankly, there's a Dondero exclusion in some of the markets, we've been told by our insurance brokers, and so getting the right policy that would cover the independent board was difficult. We did get that.

And then ultimately there'll be another provision in the agreement here -- I don't see it off the top of my head -- but

a gatekeeper provision. And that provision --

Q Hold on one second, Mr. Seery, because we'd want to scroll. So Paragraph 4 and Paragraph 5, were those, were those provisions put in there at the insistence of the prospective independent directors?

A Yes. And remember, so the Paragraph 4, as I said, is the guarantee of Strand's obligations for its indemnity. Again, Strand didn't have any money, so the Debtor had to be the one purchasing the D&O for the directors and for Strand. So those are the two provisions that really worked to address my concerns about the indemnities and then the D&O.

MR. MORRIS: Okay. Can we go to Paragraph 10, please? There you go.

BY MR. MORRIS:

Q Is this the other provision that you were referring to?

A This is. It's come to be known as the gatekeeper provision, but it's a provision that I actually got from other cases. Again, another very litigious case that I thought it was appropriate to bring in to this case.

And the concept here is that when you're dealing with parties that seem to be willing to engage in decade-long litigation in multiple forums, not only domestically but even throughout the world, it seemed important and prudent for me and a requirement that I set out that somebody would have to come to this Court, the court with jurisdiction over these

matters, to determine whether there was a colorable claim. And that colorable claim would have to show gross negligence and willful misconduct, *i.e.*, something that would not otherwise be indemnified.

So it basically sets an exculpation standard for negligence. It exculpates the directors from negligence. And if somebody wants to bring a cause against the directors, they have to come to this Court first and get a finding that there's a colorable claim for gross negligence or willful misconduct.

Q Would you have accepted the engagement as an independent director without the Paragraphs 4, 5, and 10 that we just looked at?

A No. These were very specific requests. The language here has been 'smithed, to be sure, but I provided the original language for 10 and insisted on the guaranty provision above to assure that the indemnity would have some support.

Q And ultimately, did the Committee and the Debtor agree to provide all of the protection afforded by Paragraphs 4, 5, and 10?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, we're going to move on now to good faith, Section 1129(e)(3), just to give you a little bit of a roadmap of where we're going.

BY MR. MORRIS:

Q Let's talk about the process that led to the plan that the Debtor is asking the Court to confirm today. Real basic stuff at the beginning. Can you tell me your understanding of the makeup of the UCC, of the Creditors' Committee?

A The Creditors' Committee in this case has four members. It's UBS, the Redeemer Committee, which are former holders of interests in a fund called the Crusader Fund, which was a Highland fund, who had redeemed and then had a dispute with Highland.

And the next creditor is Mr. Terry and Acis. We generally group them as one, but the creditor is Acis.

And the fourth creditor is an entity called Meta-e, and they provide litigation support and technical support and discovery support in litigations for the Debtor, including in this case now.

Q All right. Just focusing really on the early period, the first few months, can you describe the early stages of the negotiations with the UCC as best as you can recall?

A Well, I think the early stage of the case wasn't directly a negotiation; it was really trying to understand as best we could the myriad of assets that we had here, the various businesses that the Debtor either owned, controlled, or managed, as well as the claims.

We went through a process of trying to understand each of

the claims that the Debtor -- or against the Debtor that were represented by the Committee, as well as some other claims that were not on the Committee.

Q Was the Debtor -- I mean, was the Committee initially pushing the independent board to go to a monetization plan, an asset monetization plan?

A Very quickly and early on, the Debtor -- the Committee took a pretty aggressive approach with the Debtor and the independent board. I think the Committee's perspective, as articulated to me, and where -- at least how we took it, was that they'd been litigating for years and they sort of knew the situation and the value of their claims, that the Debtor was insolvent, in their view, and that we should be operating the estate in essence for the benefit of the creditors.

Q And what was the board's view in reaction to that?

A We disputed it. And the reason we disputed it was very straightforward. Save for the Redeemer claim, which at least had an arbitration award, Acis and Mr. Terry didn't have any specific awards, notwithstanding the results of the Acis bankruptcy, and UBS, while it had a judgment, that judgment was not against the Debtor.

So our view was, until we have our hands around these claims and we determine what the validity is in our estate, that we would treat the Debtor as if it were solvent. We also wanted to assess the value of the assets. So, looking at the

assets not just from a book value but what they might be really worth in the market.

Q And did the board in the early portion of the case consider all strategic alternatives?

A I don't know if we considered every strategic alternative, but we certainly considered a lot of alternatives.

Q Can you describe for the Court the alternatives that were considered by the board before settling on the asset monetization plan?

A Well, early on, you know, we looked at each of the -- what we would think of the large category types of ways to resolve a case. Number one, could we go through a very traditional reorganization with either stretching out claims to creditors after settlement or converting some of those to equity, getting new equity infusions? We considered those alternatives.

Number two, we considered whether we should simply sell the assets. That's one of the things that the Committee was pushing for. They could be sold to third parties. They could be sold individually. Mr. Dondero potentially could buy some of the assets. That'd be a reasonable reorganization in this case.

We also considered whether that, you know, we would just do a straight liquidation. Is there some value to doing -- converting the case to a 7 and doing a straight liquidation?

We also considered a grand bargain plan, and this was something that I worked on quite a bit. The phrase is mine, although no pride of authorship, certainly, since it didn't work out. But that perhaps we could come to an agreement with the major creditors and with Mr. Dondero and then shift some of the expenses in the case out further to litigate some of the other claims while reorganizing around the base business.

And then, finally, we considered the asset monetization plan, and ultimately that evolved into what we have today.

Q Were there guiding principles or factors that the board was focused on as it assessed these different options?

A Well, the number one guiding principle was overall fairness and equitable treatment of the various stakeholders. So, again, at that point, we didn't know exactly what, if anything, we would owe to claimants like UBS or HarbourVest or even Mr. Terry and Acis. We had a good sense of where we would end up with Redeemer, I think, but we still had some options and wanted to negotiate the issues related to potential appeal rights that we had. So I think that was the number one overall concern.

But that did evolve over time. Costs of the case were exceptionally high. And the reason they're so high is that Highland was run for a long time, at least from what we can tell, at an operating deficit. Typically, what it would do is run at a deficit and then sell assets to cover the shortfall,

and it would defer a whole bunch of employee -- potential employee compensation. And because of the way the environment was going, particularly in the first half of the year, it didn't look to us like there was going to be any great asset increase that would somehow save us from the hole that was being dug, the considerable amount of expenses to run the case.

Q Did changing the culture of litigation factor into the path that the board considered?

A Well, we certainly looked at the way the company had run and why it got to where it is in terms of litigating. And not just litigating valid claims, but litigating any claim to the *nth* degree. And stories are legion, I won't talk about them, but of Highland taking outrageous positions and then pursuing them, hoping that the other side caves.

We determined that this estate couldn't bear that kind of expense, and it wasn't fair and equitable to do that anyway. So we wanted to attack the claims that we could -- and I say attack; try to resolve them as swiftly as we could -- protecting the Debtor's interests but trying to find an equitable resolution.

I'm not averse to litigating. And I think when there are claims that are legitimate, the Debtor should pursue them. There's always -- a good settlement is always better than a bad litigation. But if there (indecipherable) to resolve

them, we should -- we should pursue those. And if we have defenses, we should pursue those, and not just be held up because someone else is willing to, you know, take a more difficult position than we are.

But in this case, it really did cry out for some sort of resolution on many of these cases because they were far beyond -- far beyond the facts and far beyond the dollars. There was personal antipathy involved in virtually every one of the unlitigated or unliquidated Committee cases.

Q Did the board, as it was assessing the various strategic alternatives, consider maximization of the value?

A Always number one was, can we maximize value? But that has to be done within the context of the risk you're taking and the time it takes. So, not all wine ages well in a cave and not all investments get to be more valuable over time. We wanted to look at each individual asset that the Debtor had, each claim that the Debtor had, each defense that the Debtor had, and consider the time and the costs and then try to find the best way to maximize value with those multiple considerations.

Q How about the role and support of the UCC, how did that factor into the decision-making, the Debtor's decision-making as to what plan to pursue?

A Well, you know, the decision-making with the UCC was cumbersome and oftentimes difficult. Sometimes our relations

were very contentious, and sometimes they continue to be. But the Committee had significant oversight because of the protocols that had been agreed to. Some of the disputes we had with the Committee found their way into the court. Those time and that cost, some of which we won, some of which we lost, but those factored into our analysis.

But eventually we knew that we were going to need to get, you know, some significant portion of the Committee to agree, because, at minimum, Meta-e had a liquidated claim, and Redeemer was very close to fully liquidated, so we were going to need support from the Committee with whatever we tried to push through. And so that's how we negotiated with the Committee from that perspective.

Q Is it fair to say that the Debtor and the Committee's interests because aligned upon approval of the disclosure statement back at the end of November?

A I don't think they became perfectly aligned, because we still have, you know, some disputes around, you know, implementation and things like the employee releases, which were very important to me. But I think we're largely aligned and that the Committee is supportive, as Mr. Clemente said at the start of this hearing, of the plan. We negotiated at arm's length with them about most of the provisions. I would say virtually everything was a relatively significant negotiation, or at least there was a good faith exchange of

views on each side and assessment of legal and financial risks. And I think at this point they're largely in support of the plan.

Q All right. Let's -- you mentioned the grand bargain, and I just want to spend a few minutes talking about that, how that evolved. Focusing your attention in the kind of late spring/early summer, can you tell me what efforts you and the board made in trying to achieve a grand bargain in that early part of the case?

A Well, we had -- at that point, we had reached agreement, at least in principle, with Redeemer. And the thought was -- my thought was that we could construct a plan, understanding what the cash flows looked like and what we thought the base value of the asset looked like -- and those are not just the assets that are tangible assets, but the notes that are collectible by the Debtor as well -- and then engage with UBS in particular. Redeemer. To some degree, Mr. Terry. We had not yet reached any agreement with him. But UBS, we thought of as a slightly -- I don't mean this to be disparaging -- but a slightly more commercial player than Acis because of the history that Acis had to deal with and endure.

And we were hoping that we could get some sort of coalescence around an agreed distribution that would require those creditors to take a lot less than they might have otherwise agreed, Mr. Dondero to put in more than he otherwise

thought he could put in or would be willing to put in, and then we would get out to Acis and the other creditors with a plan.

And so I built, with the team at DSI, a detailed model on how the distributions could work and what the potential timing could be, trying to, each time, move in a multidimensional way with UBS, Redeemer, Mr. Dondero, and to some degree Acis, around the respective issues for their claims.

Again, UBS and Acis had not been resolved and weren't close, but the thought was if we could get dollar agreements for distribution, perhaps we could then figure out how to construct settlements of their claims.

Q During this time period, did you work directly with Mr. Dondero in the formulation of a potential grand bargain?

A I did, yes.

Q And the model that you described, did that go through a number of iterations?

A It went through multiple iterations. I don't believe I ever shared the model with anybody. One of the reasons for that is I didn't want -- I felt I had -- if I was going to share it with Mr. Dondero, for example, I'd have to share it with UBS and I'd have to share it with Redeemer. And I wanted it to be -- I wanted it to be a working model with the team at DSI. In particular, we would make, you know, adjustments on an almost-daily basis.

Mr. Dondero had -- remember, he was still portfolio manager at that time. He also had a related-party interest, as people have seen from some of the litigation around the sales of securities. He had access and was receiving emails from the team as well as from the finance team. So he had access to the information at that point and had a view around the value. And this was more trying to adjust what those distributions would look like depending on the amounts that he would be willing to contribute.

Q Moving on in time, did there come a time when the Debtor participated in a mediation with certain of the major constituents in the case?

A Yes. That was towards the end of the summer.

Q And during that mediation, did the concept of a grand bargain, was that put on the table? Without discussing any particulars about it, just as a matter of process, was the grand bargain subject to the mediation discussions?

A Well, the mediation had multiple components, so the answer to the question in short is yes, but I'll go longer because I tend to. The grand bargain plan stayed in place, and that was going to be an overall settlement. The mediation was initially, I think, as a main course, focused on Acis, UBS, and then the third piece being the grand bargain. And if you could settle one of those claims, perhaps -- obviously, if you could settle both of them, you could get to then focusing on

the grand bargain.

But even before we got to mediation, the idea of the monetization plan had also been put forth. Notwithstanding that it wasn't my idea, I actually thought that it was a good idea, ultimately. Didn't initially. And the reason for that is that it set a marker for what a base expectation could be for the creditors and just for Mr. Dondero. And knowing that that was out there, at least with them, that could hopefully be a catalyst in the mediation for folks to say, let's see if we can get our claims done and get a grand bargain done, because if we don't we have this Debtor monetization plan. And by that -- at that point, I don't think we had much agreement with the Committee on anything, and certainly with Mr. Dondero, on -- on a monetization plan.

Q All right. And let's just bring it forward from the fall, post-mediation, to the present. Has -- has -- have you and the board continued discussing with Mr. Dondero the possibility of a grand bargain?

A Well, it's shifted. So, the grand bargain discussions really -- you had multiple phases. So, you had pre-mediation. There was the grand bargain discussions that I just described previously that also involved UBS and Redeemer, and to some degree Acis and Mr. Terry. Then you have the mediation, which is much more focused on the claims and whether they can fit into the grand bargain with Mr. Dondero.

And the way that was conducted was a little bit more separated, meaning the parties would talk to the mediator, the mediator would then go and talk to other parties and try to work a settlement on each of those components.

Subsequent to the mediation where we reached the agreement with Acis and Mr. Terry, and we ultimately in that timeframe banged out the final terms of our agreement with Redeemer, we engaged with Mr. Dondero around -- I wouldn't call it the grand bargain, but a different plan. By that point, the monetization plan had started to gain some traction with the creditor group, and Mr. Dondero and his counsel, I believe, focused on the potential of what was referred to as a pot plan. And while it has the -- it could have the ability of being a resolution plan, it wasn't the grand bargain plan that I had initially envisioned. And pot plan was really a misnomer, because it didn't have a whole pot, so -- so it's a little bit of a hybrid.

Q Did the board spend time during its meetings discussing various pot plan proposals that had been put forth by Mr. Dondero?

A Oh, absolutely. And not only the board. I mean, we did our own work as an independent board and then brought in our professional advisors, both your firm and the DSI folks, to go through analytics around the pot plan, and even before that, the other plan alternatives, but we had direct discussions

with Mr. Dondero and his counsel.
Q And in the last couple of months, has the board listened to presentations that were made by Mr. Dondero and his counsel concerning various forms of the pot plan?
A Yes. At least two or three.
Q And during this time, has the board and the Debtor communicated with the Committee concerning different iterations of the proposed pot plan?
A Yes. We've had continual discussions with the Committee regarding the various iterations of the potential grand bargain all the way through the pot plan.
Q And during this process, did the Debtor provide Mr. Dondero and his counsel with certain financial information that had been requested?
A Yes. As I said, up 'til the point where he resigned and was then ultimately, at the end of the year, removed from the office, he had access to financial information related to the Debtor and even got the information from the financial group. Subsequent to that, we've provided him with requests -- with financial information that was requested by his counsel.
Q Okay. Were your efforts at the grand bargain or the pursuit of the pot plan successful?
A No, they were not.
Q Do you have an understanding as to -- just, again, without going into -- into details about any particular proposal, do

you have an understanding as to what the barrier was to success?

A The grand bargain, we just never got the traction that we needed to get that going and the sides were just far -- too far apart. And the pot plan, similarly. Our discussions with Mr. Dondero and the Committee, they're -- they're very far apart.

Q And is it fair to say that the Committee's lack of support in either the grand bargain or the pot plan is the principal cause as to why we're not talking about that today?

A Well, it's -- it -- right now, we've got the plan that's on file, the monetization plan. The monetization plan has gone out for creditor vote and has received support. It distributes, we think, equitably, as well as a significant amount of distributions to unsecured creditors. And there really isn't an alternative that we see, based upon the numbers I've seen, that competes with it or has any traction with the largest creditors.

Q All right. So, now we've talked about various proposals or alternatives that were considered by the board, including the grand bargain and the pot plan. Let's spend some time talking about the plan that is before the Court today and how we got here. And I'd like to take you really back to the beginning, if I may.

Tell us, tell the Court just what the board was doing in

the early months after getting appointed, because I think context is important here. What were you all doing the first few months of the case?

A Well, the first few months, we really were drinking from the proverbial fire hose, trying to get an understanding of the business, how it had been managed previously, what the issues related to the different parts of the business were. And then an understanding of each of the employees that were working under us, what their roles were, how they performed them, who sat where with respect to each of the assets, what the contracts looked like, whether they be shared service or management agreements. And then we started looking at the individual assets in terms of value.

At the same time, we were trying to get up to speed on the complex nature of the claims that were in the case. The liquidated claims were relatively easy, but there had been a significant amount of transfers in and out of the Debtor, and then there's a myriad of relationships involving related entities that we had to understand, both with respect to the claims as well as with respect to the assets.

And so that -- those were the main things we were doing for those first few months in the case.

Q Just a couple months into the case, the COVID pandemic reared its head. Do you recall that?

A Yes. We had been in Dallas every day working up 'til the

time of the COVID and some of the shutdown orders, particularly in the Northeast, and so that changed the dynamic of how we could function every day.

Notwithstanding that, we -- we were able to manage from afar, and ultimately, when there were some cases in the office of COVID, we -- on the Highland side, not the related entity side, but on the Highland side -- we determined that the staff and the team should work from home, which they were able to do quite well.

Q Okay. In those early months, do you recall that there was a substantial erosion of value, at least as of the time you were appointed in those first three or four months?

A There was. And I think we've heard some -- some noise about what that value was and the drop in the asset value as opposed to net value. But the asset value did, did drop significantly.

Q Can you describe for the Court your recollection as to the causes of the drop in the value that you just descried?

A Yes. The number one drop was a reservation that the board took for a receivable from an entity called Hunter Mountain. The quick version of this is that Hunter Mountain owns Highland. As I mentioned, while Strand is the GP, it only has a quarter-percent interest in Highland. The vast majority of the interests are owned by an entity called the Hunter Mountain Investment Trust in a very complicated, tax-driven

structure.

Dondero and Okada transferred their interests in Highland at a high valuation to Hunter Mountain. Hunter Mountain then didn't have the money, so it, in essence, borrowed the money from the Debtor in a note to pay for those interests. There's a circular running of the cash, but we were not sure where, if any, where any assets are, if they would be sufficient. So we took a reservation of $58 million for that note.

The second biggest piece of the reduction in value was the equity that was lost in the Select Equity account. This is a Debtor trading account that was managed by Mr. Dondero. $54 million was lost in that account. Basically, it was really highly margined, very high leverage in that account when the market volatility came in. As it grew through January, February, March, more and more margin calls. Ultimately, Jefferies, which had Safe Harbor protections -- technically, the account was not a Debtor account, but they would have had it anyway -- they seized that account. $54 million in equity was lost in that account.

The next highest amount is about $35 million, but it's higher now. That's just the bankruptcy costs, where we have spent cash and Debtor assets in the case. It was about $36 to $40 million through the end of the year. That's now higher.

About $30 million was lost in paying back Jefferies on the asset side of the ledger in the Highland internal equity

account. This was similar to the equity -- the Select Equity account, also managed by Mr. Dondero. Extremely highly-levered coming into the market volatility of the first quarter, which was exacerbated, obviously, by the COVID. That was about $30 million that was repaid in margin loan in that account.

In addition, $25 million of equity was lost in that account while Mr. Dondero was managing it. I took over effectively managing it in mid-March and worked with Jefferies to keep them from seizing the account. We've since gotten a bunch of value coming back from that account, but that was the amount that was lost.

About $10 million was lost in the Carey Limousine loan transaction. That is a -- an interesting little company. Has done a nice job -- management did a very good job coming into the year, and it actually had real value, notwithstanding the changeover to Uber in people's preferences. But with the COVID, it really relied on events, airport travel, executive travel, and that really took a bite out of it, although, you know, we're hoping to be able to restructure, we have restructured it to some degree, and we're hoping that there could be value there.

And then about $7 million was lost in equity in an entity called NexPoint Hospitality Trust. This is another extremely highly-levered hospitality REIT that NexPoint manages. It

trades on the Toronto Stock Exchange. And I think likely that -- it's got a lot of issues with respect to its mortgage debt. And because it was hospitality, it was really hurt by the COVID.

And I think that's probably -- those numbers add up to north of $200 million of the loss.

Q All right. Thank you for that recitation, Mr. Seery. So, turning to the spring, after all of those issues were addressed, at the same time you were working on the grand bargain, did the Debtor and its professionals begin formulating the monetization plan that we have today?

A I'm sorry, in the spring? I lost that question. I apologize.

Q That's okay. After you dealt with everything that you just described, were you doing two things at once? Were you working on the grand bargain and the asset monetization plan at the same time?

A Yes, that's correct.

Q All right. Can you just describe for the Court kind of, you know, how the asset monetization plan evolved up until the point of the mediation?

A Yes. I alluded to it earlier, but because the Debtor was running an operating deficit, we were very concerned about liquidity. Highland typically runs, from a liquidity perspective and a cash perspective, very close to the edge. I

don't feel particularly comfortable helping lead an organization that's running that close to the edge. And I was very focused on the burn that we had on an operating basis, as well as the professional cost burn, because for a case this size it was significant.

The rest of the board felt similarly, and one of the directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel, came up with the idea that we needed an alternative to continuing to just burn assets while we were in this case. There had to be some sort of catalyst to get the parties, both Mr. Dondero as well as the creditors -- at that point, as I said, we weren't settled with Acis or UBS, and we weren't, frankly, close with either of them. And so we needed what -- what I think the -- the idea was that we needed a catalyst to have people focus on what the alternative was. Because continuing to run the case until we ran out of money was not an acceptable alternative.

What I didn't like about the plan was it didn't have anybody's support, and so I wasn't sure how we made progress with it without having some Committee member or Mr. Dondero in support of it. I was outvoted, although maybe I came around in the actual vote. But ultimately, I think it was actually a quite smart idea, because it did set the basis for what the case would be. Either there would be some resolution or it would push towards the monetization plan, and parties could

then assess whether they liked the monetization plan or not. That if I was going to be the Claimant Trustee or the -- defending the, you know, against the claims, they would have the pleasure of litigating with me for some period of time. Or they could come to some either grand bargain or ultimately some other resolution.

And as we started to develop a plan and put more of a framework -- more flesh around the framework, it actually started to look more and more like a real viable alternative to either long-term litigation or some other grand bargain if we couldn't get there.

Q And ultimately, did the board authorize the Debtor to file its initial version of the asset monetization plan at around the time of the mediation?

A Yeah. We developed it over the summer and really fleshed it out in terms of how the structure would work, what the tax issues were, what the governance issues were. We did that largely negotiating with ourselves, so we -- we were extremely successful. And then we filed, we filed that plan right before the mediation.

And my recollection is that there was some concern from the mediators that they thought that putting that plan out in the public could upset the possibility of a grand bargain, so we ended up filing that under seal.

Q Do you recall what the Committee's initial reaction was to

the asset monetization plan that you filed under seal?
A Well, initially, they -- the Committee didn't like it. They didn't like the governance. They didn't like the fact that it set up for those creditors who didn't litigate the prospect of litigations to try to resolve their claims. It effectively cut out some of the advisory that the Committee currently had. The -- one of the driving forces behind the asset monetization plan and how we initially started it is we can't continue these costs, as I said. Well, an easy way to get rid of -- to reduce the costs is to get rid of half of them.

So if you could get rid of the Committee, effectively, and coalesce around an asset monetization vehicle, then if folks wanted to resolve their claim, you could. If you had to litigate it, you could, but you'd have one set of lawyers that the estate was paying for, one set of financial advisors the estate was paying for, as opposed to multiple sets.
Q In addition to the corporate governance issues that you just described, did the Committee and the Debtor quickly reach an agreement on the terms of the treatment of employee claims and the scope of the releases for the employees?
A No. Not very quickly at all.
Q Yeah.
A You know, again, one of the issues in this case that drives perspectives is the history that creditors have in

dealing with Highland and in dealing with many of the employees at Highland, you know, who had worked for Mr. Dondero and served at his pleasure for a long time, and how they had been treated in various of their attempts to collect their claims. So the idea of giving any sort of releases to the employees was anathema to -- to many of the Committee members.

From my perspective, you know, releases are particularly important because there's a *quid pro quo* leading up to the confirmation of a plan, particularly with a monetization plan where it's clear that the employees are all going to be or largely going to be either transitioned or terminated. If they're going to keep working towards that, we either have to have some sort of financial incentive or some sort of assurance that their actions which are done in good faith to try to pursue this give them the benefit of more than just their paycheck.

And so we thought we were setting up the *quid pro quo* in terms of work towards the monetization, bring the case home, and you're entitled to a release, so long as you haven't done something that was grossly negligent or willful misconduct. And the Committee, I think, wanted to have a more aggressive posture.

Q And did those disagreements over corporate governance and the employee releases kind of spill out into the public at

that disclosure statement hearing in October?
A I think they spilled out at that hearing as well as in the hearing either the next day or two days later around Mr. Daugherty's claim. And again, it was -- it was contentious. I tend to try to reach resolution, but I tend to hold firm when I think that there's a good reason, an equitable reason to do so, and compromising that issue was very difficult for me.
Q But in the weeks that followed, did the Committee and the Debtor indeed negotiate to resolve to their mutual satisfaction the issues surrounding corporate governance and employee releases?
A We did, yes.
Q And were -- was the Debtor able to get its disclosure statement approved with Committee support in late November?
A We did, yes.
Q Can you describe for the Court generally kind of the process by which the Debtor negotiated with the Committee? I'll ask it as broadly as I can, and I'll focus if I need to.
A Yeah. The process was usually in group settings with the independent directors, professionals, and the Committee members and their professionals. Oftentimes, then, there would be certain one-off conversations if there was a particular issue that was more important to one Committee member or another, or if they were designated by the Committee

to be the point on that. And so I negotiated on behalf of the Debtor, both collectively and individually, around these points.

The biggest issues related to governance of the Claimant Trust, the separation of the Claimant Trust and the Litigation Trust, which was important to me, the treatment of employees between the filing -- the time we came up with the case and when we were going to exit, and then how that release provision would work.

Q Is it fair to say that numerous iterations of the various documents that embodied the plan were exchanged between the Debtor and the Committee?

A Yes. There were -- there were dozens.

Q Fair to say that the negotiations were arm's length?

A Absolutely. Often contentious, always professional, but I do think that there were, you know, well -- good-faith views held by folks on both sides. And I think we were fortunate to be able to get resolution of those, because they were strongly-held views.

Q Okay. And ultimately, I think you've already testified, and Mr. Clemente certainly made it clear: Is the Debtor -- does the Debtor have the Committee on board for their plan today?

A My understanding is again -- and you heard Mr. Clemente -- both the Committee and each of the individual members are

supportive of the plan.

Q All right. Let's switch to Mr. Dondero and his reaction to the asset monetization plan. Can you describe for the Court based on your experience and your interaction with him what you interpreted Mr. Dondero's position to be?

A VOICE: Objection, hearsay, or --

MR. DRAPER: Objection, hearsay. Calls for speculation, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yeah. I had direct discussions with Mr. Dondero regarding the plan, the asset monetization plan, as I mentioned, direct discussions regarding a potential grand bargain. The initial view from Mr. Dondero was, and he told me, that if he didn't get a plan that he agreed to, if he didn't have a specific control or agreement around what got paid to Acis and Mr. Terry and what got paid to Redeemer specifically, that he would, quote, burn the place down. I know that because it is, excuse the pun, seared into my mind, but I also wrote it down. And that was, you know, in the early summer.

We had subsequent discussions around the plan, and as we were talking about the -- about the grand bargain or -- the pot plan hadn't come out at that point -- even on a large call -- the plan initially called for a transition, and still does, of employees of the Debtor to a related entity to continue

performing services that were under the prior shared service agreements that we were going to terminate.

But that transition is wholly dependent on Mr. Dondero. And we had a call with at least five to seven people on it where I said to Mr. Dondero, look, this is going to be in your financial interest to agree to a smooth transition. These people have worked for you for a long time. It's for their benefit. You portfolio-manage these funds. It's to the benefit of those funds to do this smoothly. And if there's litigation between you and the estate later, then those chips will fall where they may.

And he told me to be prepared for a much more difficult transition than I envisioned.

And I specifically said to him, and this one sticks in my mind because I recall it, I said, don't worry, Mr. Dondero -- I think I used Jim -- I will be prepared. I was a Boy Scout and we spend time preparing for these kinds of things. So we're -- we would love to get done the best transition we can, but we will be prepared for a difficult one.

So, from the start, the idea of the monetization plan was not something that obviously he supported. We did agree with -- after his inquiry or request with the mediators, to file it under seal while we went into the mediation.

BY MR. MORRIS:

Q And after, after that was filed in September, early

October, did Mr. Dondero start to act in a way that the board perceived to be against the Debtor's interests?

A Certainly. I mean, he previously had shown inclinations of that, but that -- it got very aggressive as he interfered with the trades we were trying to do in terms of managing the CLO assets. He took a position that postpetition, which was really one of his entities taking a position, that postposition a sale of life policy assets was somehow not in the best interests of the funds and that we had abused our position, notwithstanding that he turned it over to us with no liquidity to maintain those life policies. There were several other instances. And those led to the decision to, one, have him resign, and then ultimately, after the text to me that I perceived as threatening, and we've had subsequent hearings on it, we asked him to leave the office.

Q Okay. Let's move back to the plan here. Can you describe, you know, generally, if you can, the purpose and intent of the asset monetization plan?

A Well, very simply, the main purpose is to maximize value. This is not a competition between Mr. Dondero and myself. I have no stake in getting more money out of the maximization other than my duty to do the job that I was hired to do.

So our goal is to manage the assets in what we think is the best way to do that over time, and find opportunities where the market is right to monetize the assets, primarily

through sales. There may be other instances, depending on the type of asset, whether a sale makes sense, if we can structure it through some kind of distribution that's more structured.

Q We've used the phrase a bunch of times already. Can you describe in your own words what an asset monetization plan is in the context of the Debtor's proposal?

A Well, it may be slightly an awkward moniker, but I think it's not completely different than what you'd see, in some respects, to a regular plan, where you equitize debt and you operate the business for the benefit of the equitized debt. Here, it's a little different in that we know exactly how we're going to move forward. We've effectively -- we'll effectively turn the debt obligations into trust interests and we will pay those as we sell down assets. So we've got it structured in a way where we can pivot depending on market conditions and we'll be managing certain funds that the assets sit in.

So there's really four assets where the assets sit, and we'll manage those. First are the ones that the Debtor owns directly. Second will be the ones that are in Restoration Capital -- Restoration Capital Partners. Third are the assets in a fund called Multi-Strat. Fourth is the direct ownership interest in Cornerstone, and technically (garbled) would be the -- would be the next one.

So we have the ability to manage these individual assets

and then be able to sell them in what we determine to be the best way to maximize value, depending on the timing.

Q And when you say that you're going to continue to operate the business, do you mean that the Debtor will continue to manage the assets you've just described in the same way that it had prior to the petition date?

A It'll be a smaller team, but that's the Debtor's business. So what we won't be doing are the shared services anymore. That was part of the Debtor's business. But we will be managing the assets. So the 1.0 CLOs, we'll manage those assets. The RCP assets, we'll manage those assets. The Trussway Holdings assets, we'll managing those assets. Each of them is a little bit different. There's things as diverse as operating companies to real estate. We'll operate, subject to final agreement, but the Longhorn A and B, which are separate accounts that are -- were funded and are controlled by the largest -- one of the largest investors in the world. And so they have agreed that we should manage those assets for them.

So we're -- that's the business that the Debtor is in. It won't be doing all of the businesses that the Debtor was in before, like the shared services, but the management of the assets will be very similar.

Q And why do these funds and these assets need continued management? Why aren't you just selling them?

A Well, in some respects, they could just be sold, but the -- we believe that the value would be a lot lower. So, a lot of them are complex. The time to sell them may not be now. Some will require restructuring in some way, whether -- not through a reorganization process, but some sort of structural treatment to how the obligations at the individual asset are treated, or the equity at the individual asset. So we're going to manage each of them and look for market opportunities where we think the value can be maximized.

MR. MORRIS: Your Honor, I'm about to switch to another topic. We have been going for a little bit more than two and a half hours. I'm happy to just continue if you and the witness are, but I just wanted to give you a head's up that I'm about to switch topics. If you wanted to take a short break, we could. If you want me to continue, I'm happy to do that, too.

THE COURT: Well, let me ask you, how much longer do you think you're going to take overall with Mr. Seery?

MR. MORRIS: I think I'll probably have another hour to an hour and a half, Your Honor. We want to make a complete factual record here.

THE COURT: All right. Well, it's 12:07 Central time. Why don't we take a 30-minute lunch break, okay? Can everybody do their lunch snack that fast?

MR. MORRIS: Sure.

THE COURT: I think that would probably be the way to go. So we'll come back -- it's now 12:08. We'll come back at 12:38 Central time and resume --

MR. MORRIS: Okay.

THE COURT: -- resume this direct testimony, okay? So, see you in 30 minutes.

MR. MORRIS: Thank you very much.

THE COURT: Okay.

THE CLERK: All rise.

(A recess ensued from 12:08 p.m. to 12:44 p.m.)

THE COURT: We are going back on the record in the Highland confirmation hearing. It's 12:44 Central time. I took a little bit longer break than I said we would.

Mr. Morris and Mr. Seery, are you ready to resume?

MR. MORRIS: I am, Your Honor.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay, good. A couple of things. I'm required to remind you you're still under oath, Mr. Seery. And also, just for people's planning purposes, what I intend to do is, when the direct examination of Mr. Seery is finished, I'm going to allow cross-examination of the Objectors in the same amount of time in the aggregate that the Debtor got, okay? So, Objectors, in the aggregate, you can spend as long cross-examining as the Debtor spent examining. I can figure out this is the most significant witness, so I'm

assuming that Debtor's other witnesses are going to be a lot shorter than this, but --

MR. MORRIS: Yes, I promise.

THE COURT: -- that's how we'll proceed. And I expect to finish Mr. Seery today.

So, all right. With that, you may proceed, Mr. Morris.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me okay, Mr. Seery?

A Yes, sir.

Q Okay. Before we move on to the next topic, you spent some time describing the asset monetization plan. Would it be fair to describe that as a long-term going-concern liquidation?

A Long-term is subjective. We anticipate that we'll be able to monetize the assets in two years. We could go out longer to three. There's no absolute restriction that we couldn't take longer, depending on what we see in the market, but the objective would be to find maximization opportunities within that time period.

Q Okay. So let's turn now to the post-confirmation corporate governance structure.

(Interruption.)

THE WITNESS: Mr. Golub (phonetic), you should mute.

THE COURT: Yes. I don't know -- I didn't catch who

that was. But anyway, anyone other than --

A VOICE: It's someone named Garrett Golub.

THE COURT: -- Morris and Seery, please mute. All right. Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q At a high level, Mr. Seery, can you please describe for the Court the post-confirmation structure that's envisioned under the proposed plan?

A At a high level, we anticipate reorganizing HCMLP such that the current parties of interest will be extinguished and, in exchange, creditors will get trust interests. There'll be a trust that will sit on top of HCMLP and it will have an overall responsibility for the Claimant Trust, which will be the HCMLP assets plus the assets that we move into the Claimant Trust, depending on structural considerations. And then a Litigation Trust, which will be a separate trust, and that will roll up into the main trust. And the main trust will be where the creditors hold their interests. And those interests take the form of senior interests or junior interests.

Q All right. You mentioned a Claimant Trust. Who is proposed to serve as the Claimant Trustee?

A I am.

Q And you mentioned a Litigation Trust. Is there someone

proposed to serve as the Litigation Trustee?
A A gentleman named Marc Kirschner. He's been doing these kinds of things for a long time.
Q Is there going to be any kind of oversight group or committee?
A There is an oversight committee that sits at the main trust. Into it will report Mr. Kirschner and myself. It has oversight responsibilities similar to a board of directors in terms of the operations of the Claimant Trust and the Litigation Trust.
Q Do you have an understanding as to who the initial members of the Claimant Oversight Committee?
A The initial members will be each of the members of the Creditors' Committee. So, UBS, Acis, Redeemer, a representative from Redeemer, and Meta-e, as well as an independent named David Pauker. So that's the initial structure.
Q And can you describe for the Court, how did Mr. Pauker get involved in this?
A He was selected by the Committee.
Q Okay. Is there -- Meta-e is a convenience class claim holder. Do I have that right?
A Yeah. They're -- they -- as I went through earlier, they had a liquidated claim for litigation services. So we expected that they'll be paid off rather early in the process.

At that point, we suspect they wouldn't -- they would no longer be an Oversight Committee member and they would be replaced by an independent.

Q And do you have any understanding as to how that independent will be chosen?

A I believe it's chosen by the other members.

Q Okay. Can you describe your proposed compensation structure as the proposed Claimant Trustee?

A My compensation will be $150,000 a month, which is the same compensation I have now. In addition, we'll negotiate a bonus structure with the Oversight Committee. And that will likely be a bonus not just for myself but for the entire team, depending on performance.

Q Okay. And that -- and who is that negotiation going to be had with?

A The Oversight Committee.

Q Okay. Are you familiar with Mr. Pauker's compensation structure?

A I -- I've seen it. I don't recall specifically. I think his -- from the models, I think he's about 40 or 50 grand a month, something along those lines.

Q Okay. How about Mr. Kirschner? Do you recall -- let me just ask you this. Does it refresh your recollection at all if I said that 250 in year one for Mr. Pauker?

A Yeah. So maybe closer to $20,000 to $25,000 a month. And

then Mr. Kirschner is a lower amount, but he would get a contingency fee arrangement somewhere dependent on the recoveries from his litigations.

Q Okay. You mentioned earlier that the Debtor intends to continue operations at least for some period of time post-effective date. Do you have a view as to whether the post-confirmation entity will have sufficient personnel to manage the business?

A I do, yes.

Q And why is that? What makes you believe that the Debtor will have -- the post-confirmation Debtor will have sufficient personnel to manage the business?

A Well, we've gone through and looked at each of the assets and what is required to manage those assets. We have a lot of experience doing it during the case. The bulk of the employees, who do a fine job, are really doing shared service arrangements. The direct asset management group is a smaller group, and we'll be able to manage those with the team we're putting together.

Q Okay. How does the ten employees compare to the original plan that was set forth in the disclosure statement, if you recall?

A Well, we had less, and I believe the number was either two or three, along with me, and then using a lot of outside professional help. But we determined that we wanted to have a

much more robust team, based on the litigation that we're seeing around the case and we expect to continue post-exit, so that the team can manage those assets unfettered.

In addition, we were taking on the CLO management, the 1.0 CLO contracts. These one -- as I've mentioned before, they're not traditional CLOs in the sense that they require the same hands-on management, but they do require an experienced team to help manage the exposures, most of which are cross-holdings in different -- in different entities or different investments that Highland also has exposure to.

Q In addition to the assumption of the CLO management agreements, has the Debtor made any decisions regarding the possibility of hiring a sub-servicer?

A We have, yes.

Q And did that factor into the Debtor's decision to increase the number of personnel it was going to retain?

A Well, we determined we weren't going to hire a sub-servicer. And I'm not sure exactly when we made that determination. We do have a TPA, which is SEI, and that's a third-party administrator, to sift through the funds and provide accounting supporting to those, to those funds. So that -- they will help. We also have an outside consultant that we're using, Experienced Advisory Consultants, who are financial consultants who've worked in the business. So we do have those.

But we didn't think that we would get a third-party sub-servicer, as was the case in Acis, and determined that wasn't in the best interest of the estate.

Q Can you just shed a little light on what factors the Debtor took into account in deciding not to hire a sub-servicer?

A Well, we primarily looked at cost, as well as control of the assets, and determined that that was -- those were in the best interests of the estate, to keep them managed internally. We reviewed that with the Committee, and they agreed.

Q Okay.

MR. MORRIS: Let's turn now to the best interests of creditors' test, Your Honor, 1129(a)(7), and let's talk about whether the plan is in the best interests of creditors.

BY MR. MORRIS:

Q Has the Debtor done any analysis to determine the likely value to be realized in a Chapter 7 liquidation?

A We have, yes.

Q And has the Debtor done any analysis to determine the likely recoveries under the plan?

A Yes.

Q Okay. Do you recall when these projections were first prepared?

A We started working on projections in the fall, as we were developing the monetization plan. We filed projections, I

believe, in November. We've subsequently updated those projections based on the claims, market condition, and value of the assets.

Q And were those updates provided to plan objectors last week?

A Yes, they were.

Q Okay. Can we refer to the projections that were in the disclosure statement as the November projections?

A That'd be fine.

Q And can we refer to the projections that were provided to the objectors last week as the January projections?

A Yes.

Q And as --

A I think they're actually -- I think they're actually dated February 1, is the most recent update.

Q Okay. And then was a further update provided yesterday and filed on the docket, to the best of your knowledge?

A Yes.

Q All right. We'll talk about some of the changes in those projections.

MR. MORRIS: Can we call up on the screen Debtor's Exhibit 7D as in dog? And this document is in evidence. Um, --

THE COURT: No, this is -- oh, wait. How many Ds is it? Seven?

MR. MORRIS: It's 7D, so that would be on Docket 1866, all of which has been admitted.

THE COURT: Okay. You're right.

MR. MORRIS: Okay.

And if we could just, I'm sorry, go to Page 3.

BY MR. MORRIS:

Q Is there any way to look at this, Mr. Seery? Is this the January projections that were provided last week?

A Yes.

Q Okay. Can you describe for the Court the process by which this set of projections and the November projections were prepared? How did the Debtor go about preparing these projections?

A Yeah. These are prepared what I would call bottoms-up. So what we did was we looked at each of the assets that the Debtor owns or manages or has a direct or indirect interest in, used the values that we have for those assets, because we do keep valuations for each of the assets that the Debtor owns or manages in the ordinary course of business. We then adjusted those depending on what we saw as the outcomes for the case, either a plan outcome or a liquidation outcome, and then rolled those into the -- into the numbers that you see here.

So the 257 and change. And please excuse my eyesight. I'm going to make this bigger. The 257 is the estimated

proceeds from monetization. Above that, you see cash. That's our estimated cash at 131. And we monitor those, those values daily.

Q And were these projections prepared under your supervision?

A They were, yes.

Q Okay. And who was involved in the preparation of this document and other iterations of the projections?

A The team at DSI. Obviously, myself; the team at DSI; as well as the, at least from a review perspective, counsel.

Q All of these contain various assumptions. Do I have that right?

A Yes.

MR. MORRIS: Can we go to the prior page, please, I think is where the assumptions are? And let's just look at a few of them. Okay. Can we make that a little bigger, La Asia? Okay. Good.

BY MR. MORRIS:

Q Why does the Debtor's projections and liquidation analysis contain any assumptions? Why, why include assumptions?

A Well, all projections contain assumptions. So an assumption -- I was strangely asked the question at deposition, what does that mean? It's a thing or fact that one accepts as true for the purposes of analysis. And so in terms of looking out into the future as to what the potential

operation expenses will be and what the potential recoveries will be, one has to make assumptions in order to be able to compare apples to apples.

Q And do you believe that these assumptions are reasonable?

A Yes. It would make no sense to have assumptions that aren't reasonable. I mean, and we've all seen that with analysis through our respective careers. It really should be grounded in some fact and a reasonable projection on what can happen in the future, based upon experience.

Q Okay. And have you personally vetted each of the assumptions on this page?

A Yes.

Q Okay. Let's just look at a few of them. Let's start with B. It says, All investment assets are sold by December 31, 2022. Do you see that?

A Yes.

Q Why did the Debtor make that assumption?

A We looked at a two-year projection horizon. We thought that that was a reasonable amount of time, looking at these assets, to monetize the assets. Remember that we did go through a process of the case over the last year, and we did consider monetization asset events for certain of the assets throughout the case, some of which we were successful on, some of which we weren't, some we just determined to pull back. But we do believe that, based upon our view of the market and

where we think these assets will be positioned, that monetizing them over a two-year period makes sense.

Q And is it possible that it takes longer than that?

A It's possible. The -- you know, we would be wrong about the market. The -- we could go into a full-blown recession. Capital could dry up. The financing markets could turn negative. But they're extremely positive right now. Those things could happen. But we're assuming that they won't.

Q And is it possible that you complete the process on a more accelerated timeframe?

A That's always possible. It's not, in my experience, a good way to plan. Luck really isn't a business strategy. But if good opportunity shows up and folks want to pay full value for an asset, we certainly wouldn't turn them away just so we could stretch out the time period.

Q Is it fair to say that this projected time period is your best estimate on the most likely timeframe needed?

A It's -- I think it's the best estimate that we have based upon our experience with the assets, again, and our projection of the marketplace that we see now. If things change, we'll adjust it, but this is a fair estimate of when we can get the monetization accomplished.

Q Okay. The next assumption relates to certain demand notes. Do you see that?

A Yes.

Q Can you explain to the Court what that assumption is and why the Debtor believed that it was reasonable?

A Well, the Debtor has certain notes that are demand notes. These are all from related entities. Most of the notes, the demand notes, we have demanded, and we've commenced litigation to collect. And we assume that we're going to be able to collect those.

Three notes that were long-term notes -- these were notes with maturities in 2047 that had been stretched out a couple years ago -- were defaulted recently. And we have accelerated those notes and we've asserted demands and we have commenced litigation, I believe, on each of those last week to collect. So we do estimate that we will collect on all of the notes that we've demanded and that we've commenced action on. So the demand notes as well as the accelerated notes.

The next, the next bullet shows there's one Dugaboy note that has not defaulted. That also has a 2047 maturity. I believe it's about $18 million. And we expect that one to stay current, because now I think the relater parties learned that when you don't pay a long-dated note, it accelerates, provided the holder, which is us, wishes to accelerate it, which we did. And so that note we do not expect to be collected in the time period.

Q Okay.

MR. MORRIS: Let's go down to M.

BY MR. MORRIS:

Q M relates to certain claims. Do you see that?

A Yes.

Q Can you just describe at a high level what assumption was made with which -- with respect to which particular claims?

A Well, we've summarized them there. And what we've assumed is that, with respect to Class 8, IFA, which is a derivative litigation claim that seeks to hold, loosely, HCMLP liable for obligations of NexBank, is worth zero. I think that's pretty close to settling. We assumed here $94.8 million for UBS, which was the estimated amount, and $45 million for HarbourVest.

Q And when you say the estimated amount, are you referring to the 3018 order on voting?

A Yes. We just use the estimated amount in this projection based upon the 3018 order.

Q Okay. And finally, let's look at P. P has a payout schedule. Do I have that right?

A That's an estimated payout schedule, yes.

Q And what do you mean by that, that it's estimated?

A Based upon our projections and how we perceive being able to monetize the assets and reach the valuations that we want to reach, we believe we could make these distributions. However, there's no requirement to make them.

So the first and foremost objective we have, as I said

earlier, is to maximize value, and not -- it's not based on a payment schedule, it's based upon the market opportunity. And we've estimated for our purposes here that we'll be able to meet these distribution amounts, but there's no requirement to do so.

Q Okay.

MR. MORRIS: Let's go to Page 3 of the document, please.

BY MR. MORRIS:

Q Can you just describe generally what this page reflects?

A This is a comparison of the plan analysis and what we expect to achieve under the plan and the liquidation analysis if a trustee, a Chapter 7 trustee, were to take over. And it compares those two distribution amounts based upon the assumptions on the prior page.

Q All right. Let's just look at some of the -- some of the data points on here. If we look at the plan analysis, what is -- what is projected to be available for distribution, the value that's available for distribution?

A $222.6 million.

Q Okay. So, 222? And on a claims pool that's estimated to be, for this purpose, how much?

A $313 million.

Q And what is the distribution, the projected distribution to general unsecured creditors on a percentage basis?

A On this analysis, to general unsecured creditors, it's 62.14 percent. But remember, that backs out the payment to the Class 7 creditors of 85 cents above.

Q Okay. And does this plan analysis include any value for litigation claims?

A No, it does not.

Q And is that true for all forms of the Debtor's projections?

A That's correct, yes.

Q Okay. And let's look at the right-hand column for a moment. It says, Liquidation Analysis. What does that column represent?

A That represents our estimate of what a Chapter 7 trustee could achieve if it were to take over the assets, sell them, and make distributions.

Q Okay. And let's just look at the comparable data points there. Under the liquidation analysis, as of -- the January liquidation analysis as of last week, what was projected to be available for distribution?

A A hundred and -- approximately $175 million.

Q Okay. And what was the claims pool?

A The claims pool was $326 million. Recall that that's a slightly larger claims pool because it doesn't back out the Class 7 claims.

Q Okay. The convenience class claims?

A Correct.
Q Okay. And what's the projected recovery for general unsecured claims under the liquidation analysis?
A Based on this analysis and the assumptions, 48 (audio gap).
Q Okay. Based on the Debtor's analysis, are creditors expected to do better under this analysis in the -- under the Debtor's plan versus the hypothetical Chapter 7 liquidation?
A Yes. Both -- both Class 7 and Class 8.
Q Okay. Now, this set of projections differs from the projections that were included in the disclosure statement; is that right?
A That's correct.
Q Okay. Can we just talk about what the differences are between the November projections that were in the disclosure statement and the January projections that are up on the screen? Let's start with the monetization of assets, the second line. Do you recall if there was an increase, a decrease, or did the value from the monetization of assets stay the same between the November projections and the January projections?
A They increased from November 'til -- 'til now.
Q Okay. Can you explain to the judge why the value from the monetization of assets increased from November to January?
A Well, really, it's the composition of the assets and their

value. So there's four main drivers.

The first is HarbourVest. We had a settlement with HarbourVest, which include HarbourVest transferring to the Debtor $22-1/2 million of HCLOF interests. Those have a real value, and we've now included them in the -- in the asset pool. We've also included HarbourVest in the claims pool.

The second was we talked a little bit earlier on the assumptions on the notes. We previously had anticipated that, on the long-dated notes, a collection, we -- we'd receive principal and interest currently, but we wouldn't receive the full amount of the principal that was due well off in the future, and we would sell it a discount.

So the amount of the asset pool has been increased by $24 million, and that reflects the delta between or the change between what was in the prior plan, the notes paying and then being sold at a discount, and what's in the current plan, which include the accelerated notes, which is a $24 million note that Advisors defaulted on that we have accelerated and brought action on, as well as two six -- roughly $6 million notes, one from Highland Capital Real Estate and the other from HCM Services. So that's, that's additional 24.

In addition, Trussway, we've reexamined where Trussway is in the market, both its marketplace and its performance, and reassessed where the value is. So that has increased by about $10.6 million.

That doesn't mean that we would sell it today. It means that, when you look at the performance of the company, what we think are the best opportunities in the market. As we see the marketplace with managing the company over time, we think that that asset has appreciated considerably since November.

And then, finally, there were additional revenues that flow into the model from the November analysis which would be distributable, and those include revenues from the 1.0 CLOs.

Q Okay. So that accounts for the difference and the increase in value from the monetization of assets. Is there also an increase in expenses from the November projections to the January projections?

A Yeah. It's -- it's about -- it's around $25 million additional increase.

Q And can you explain to the Court what is the driver behind that increase in expenses?

A Yeah. There's several drivers to that. The first one is head count. So our head count, we've increased. As I mentioned earlier, we determined that we wanted to have a much more robust management presence. So we've increased the head count, so we have a base comp, compensation, about $5 million more than we initially thought.

Secondly, we have bonus comp. So we've back-ended -- structured a backend bonus performance bonus for the team, and that will run another $5 million, roughly.

Previously, we had thought about, as you mentioned earlier, the sub-servicing, but we've now talked about and we have engaged a TPA, SEI, as well as experienced advisors. That's another $1 to $2 million.

Operating expenses have increased by about $8 million, based upon our assessment. The biggest driver there is D&O, which is up about $3 million. In addition, we've gotten -- we determined to keep a bunch of agreements related to data collection and operations. Those were requested by the Committee, but they also serve us in performing our functions. That's another couple million dollars.

My comp, my bonus comp was not in the prior model. So I have a bonus that has not been agreed to by the Court for the bankruptcy performance. This is not a future bonus. And we built that into the model. Obviously, it's subject to Court approval and Committee objection, and I suppose anybody else's objection, but we'll -- we'll be before the Court for that. But we wanted to build that into the model so that we had it covered in the event that it was approved.

Q Was there also a change in the assumption from November to January with respect to the size of the general unsecured claim pool?

A Yes. There have been -- there have been several changes that have happened, and we've added those and refined the claim pool numbers.

Q And are those changes reflected in the assumption we looked at earlier, Exhibit -- Assumption M, which went through certain claims that have been liquidated?

A Some, some are. That assumption, I don't believe, was -- it's not in front of me, but wasn't up to date. So, that one, for example, assumed UBS at the 3018 estimated amount. We've since refined that number to reflect the agreed-upon transaction with UBS, which is subject to Court approval.

Q Right. But before we get to that, for purposes of the January model, the one that's up on the page -- and if we need to look at the prior page --

MR. MORRIS: Let's go to the prior page, the assumption. Assumption M.

BY MR. MORRIS:

Q Assume the UBS, the UBS claim at the $94.8 million, the 3018 number. Do you remember that?

A Yeah. That's, that -- that's the assumption in this model. I think back in November we assumed HarbourVest at zero and UBS at zero. So we've since -- we've since refined those numbers, obviously, through both the 3018 process as well as the settlement with HarbourVest.

Q And did the -- did the inclusion -- withdrawn. At the time that you prepared the November model -- withdrawn. At the time the Debtor prepared the November model, did it know what the UBS or the HarbourVest claims would be valued at?

A No. We just had our assumption back then, which was zero. And now, obviously, we know.

Q And so the January model took into account the settlement with HarbourVest and the 3018 motion; do I have that right?

A That's correct. That's in the assumptions.

Q And what was the impact on the projected recoveries to general unsecured creditors from the changes that you've just described, including the increase in the claims amount?

A Well, when -- like any fraction, the distribution will go down if the claimant pool goes up. So, with the denominator going up by the UBS and the UBS amount -- the UBS and the HarbourVest amounts, the distribution percentage went down.

Q Okay. I want to focus your attention on the second line where we've got the monetization of assets under the plan at $258 million but under the liquidation analysis it's $192 million. Do you see that?

A Yes.

Q Can you tell Judge Jernigan why the Debtor believes that under the plan the Debtor or the post-confirmation Debtor is likely to receive or recover more for the --

(Interruption.)

THE COURT: All right. Hang on a minute. Where is that coming from, Mike?

THE CLERK: Someone is calling in.

THE COURT: Okay.

MR. MORRIS: Thank you.

THE COURT: Mr. --

MR. MORRIS: Let me restate the question.

THE COURT: Yes. Restate.

BY MR. MORRIS:

Q Can you explain to Judge Jernigan why the Debtor believes that the -- under the plan corporate structure, the Debtor is likely to recover more from the monetization of assets than a Chapter 7 liquidation trustee would?

A Sure. My experience is that Chapter 7 trustees will generally try to move quickly to monetize assets. They will retain their own professionals, they will examine the assets, and they will look to sell those assets swiftly.

The monetization plan does not plan to do that. I've got a year's of experience -- a year now of experience with these assets, as well as we'll have a team with several years at least each of experience with the assets. We intend to look for market opportunities, and think we'll be able to do it in a much better fashion than a liquidating Chapter 7 trustee.

The nature of these assets is complex. Many of them are private equity investments in operating businesses. Certain of them are complicated real estate structures that need to be dealt with. Some of them are securities that, depending on when you want to sell them, we believe there'll be better times than moving quickly forward to sell them now.

So, with each of them, we think that we'll be able to do better than a Chapter 7 trustee based upon our experience. The only thing that we're level-set with a Chapter 7 trustee on is that cash is cash.

Q Do you have any concerns that a Chapter 7 trustee might not be able to retain the same personnel that the Debtor is projected to retain?

A Well, again, in my experience, it would be very difficult for a Chapter 7 trustee to retain the same professionals, and typically they don't.

Secondly, retaining the individuals, I think, would be very difficult for a Chapter 7 trustee, would not have a relationship with them, and that gap of time and the risks that they would have to take to join a Chapter 7 trustee I think would lead most of them to look for different opportunities.

Q Okay. One of the other things, one of the other changes I think you mentioned between the November and the January projections was the decision to assume the CLO management contracts. Do I have that right?

A That's correct.

Q And why has the Debtor decided to assume the CLO management contracts? How does that impact the analysis on the screen?

A Well, it does add to the expense, but it also adds to the

proceeds.

When we did the HarbourVest settlement, we ended up with the first significant interest in HCLOF. HCLOF owns the vast majority of the equity in Acis 7, and also owns significant preferred share interests in the 1.0 CLOs. And we think it's in the best interest of the estate to keep the management of those assets where we have an interest in the outcome of maximizing value with the estate.

In addition, we're going to have employees who are going to work with us to manage those specific assets, so we feel like that will be something where we can control the disposition much better.

There's also cross-interests that these CLOs have in -- the 1.0 CLOs have in a number of other investments that Highland has. As in all things Highland, it's interrelated, and so many of the companies have direct loans from the CLOs. We intend to refinance that, but we feel much more comfortable and feel that there would be value maximization if we're able to work directly with the Issuers as a manager while we seek in those underlying investments to refinance the CLO debt.

Q Has the Debtor -- has the Debtor reached an agreement with the Issuers on the assumption of the CLO management agreements?

A Yes, we have.

Q Can you describe for the Court the terms of the

assumption?

MR. RUKAVINA: Your Honor, this --

THE WITNESS: Yes.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would object to this as hearsay.

THE COURT: Well, he has not --

MR. MORRIS: It's --

THE COURT: He's not said an out-of-court statement yet, so I overrule.

Go ahead.

THE WITNESS: Yeah, we -- we are going to assume the CLO contracts. We have had direct discussions with the Issuers. They have agreed.

The basic terms are that we're going to cure them by satisfying about $500,000 of cure costs related to costs that the CLO Issuers have incurred in respect of the case, and we'll be able to pay that over time.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would renew my objection and move to strike his answer that they've agreed. That is hearsay, an out-of-court statement offered to prove the truth of the matter asserted.

THE COURT: Okay. Mr. Morris, what is your response?

MR. MORRIS: He's describing an agreement. I actually think it's in the Debtor's plan that's on file already. But he's describing the terms of an agreement. He's

not saying what anybody said. There's no out-of-court statement. It's an agreement that's being described.

THE COURT: All right. Thank you. I overrule the objection.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Does the Debtor believe that the CLO agreements will be profitable?

A Yes.

Q And why does the Debtor believe that the CLO agreements will be profitable to the post-confirmation estate?

A Well, we don't -- we don't break out profitability on a line-by-line basis. But the simple math is that the revenues from the CLO contracts which will roll in to the Debtor from the management fees are more than what we anticipate the actual direct costs of monitoring and managing those assets would be.

Q Okay. Are you aware that yesterday the Debtor filed a further revised set of projections?

A I am, yes.

Q All right. Let's call those the February projections.

MR. MORRIS: Can we put those on the screen?

It's Exhibit 7P, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. I think that for some reason

-- yeah, okay. There we go. Perfect. Right there.

Your Honor, these are the projections that were filed yesterday. I'm going to move for the admission into evidence of these projections.

THE COURT: All right.

MR. TAYLOR: Your Honor, this is Clay Taylor.

THE COURT: Go ahead.

MR. TAYLOR: We object. These were -- these were not previously provided. They were provided on the eve of the confirmation hearing, after the Debtors had already revised them once and provided those on -- after close of business on a Friday before Mr. Seery's deposition. And these were provided even later, certainly not within the three days required by the Rule. And therefore we move to -- that these should not be allowed into evidence.

THE COURT: Mr. Morris, what is your response to that?

MR. MORRIS: Your Honor, first of all, the January projections were provided in advance of Mr. Seery's deposition and he was questioned extensively on it. These projections have been updated since then, I think for the singular purpose of reflecting the UBS settlement.

As Your Honor just saw, the prior projections included an assumption based on the 3018 motion. Since Mr. Seery's deposition, UBS and the Debtor have agreed to publicly

disclose the terms of the settlement, and that's reflected in these revised numbers. I think there was one other change that Mr. Seery can testify to, but those are the only changes that were made.

THE COURT: All right. Mr. Seery, what besides the UBS settlement do you think was put in these overnight ones?

THE WITNESS: I believe the only other change, Your Honor, was correcting a mistake. In Assumption M, the second line is assumes RCP claims will offset against HCMLP's interest in the fund and will not be paid from the Debtor's assets. That hasn't changed.

Basically, the Debtor got an advance from RCP that was to -- for tax distributions, and did not repay it. The RCP investors are entitled to recovery of that. So we had previously backed that out. It's about four million bucks. What happened was it was just double-counted.

THE COURT: Okay.

THE WITNESS: So, as an additional claim, it was counted as $8 million. I think that's the only other change.

THE COURT: All right. I overrule the objection. You may go forward. I admit 7P.

MR. MORRIS: Thank you, Your Honor.

(Debtor's Exhibit 7P is received into evidence.)

MR. MORRIS: Can you just -- if we can go to the next page, please.

BY MR. MORRIS:

Q So, with -- seeing that the claims pool under the plan previously was $313 million, and what's the claims pool under the projections up on the screen under the plan?

A Two -- well, remember, there's 273 for Class 8, and then you'd add in the Class 7 as well, which is the $10.2 million. So the 273 went from 313 to 273 with that settlement.

Q And is there any -- is there any reason for the decrease other than the change from the 3018 settlement -- order figure to the actual settlement amount?

A For the UBS piece, no. And then, as I mentioned, I believe the other piece would have been that four million -- that additional $4 million that was taken out.

Q And did those two changes have a -- did those two changes have an impact on the projected recoveries under the plan?

A Sure, particularly with respect to -- to the Class 8. Those recoveries went up significantly because the denominator went up.

Q Okay. Does the Debtor believe that its plan is feasible?

A Yes, absolutely.

Q And do you know whether the administrative priority and convenience class claims will be paid in full under the Debtor's plan?

A Yes. We monitor the cash very closely, so we do have additional cash to raise, but we're set to reach or exceed

that target, so we do believe we'll be able to pay all the administrative claims when they come in. Obviously, we have to see what they are. We will be able to pay Class 7 on the effective date. Any other distributions, we expect to be able to make as well.

So, and then it's -- then it's a question of going forward with a few other claims that we have to pay over time. We have the cash flow to pay those. Frontier, for example, we'll be able to pay that claim over time in accordance with the restructured terms. If the assets that secure that claim are sold, they would be paid when those assets are sold.

Q Frontier, will the plan enable the Debtor to pay off the Frontier secured claim?

A Yes. That's what I was explaining. The cash flow is sufficient to support the current P&I on that claim. We will be able to satisfy it from other assets if we determine not to sell the asset securing the Frontier claim, or if we sell the asset securing the Frontier claim we could satisfy that claim. The asset far exceeds the value of the claim.

Q Has the plan been proposed for the purpose of avoiding the payment of any taxes?

A No. We expect all tax claims to be paid in accordance with the Code, and to the extent that there are additional taxes generated, we would pay them.

Q Okay. Let's just talk about Mr. Dondero for a moment

before we move on. Are you aware that Mr. Dondero's counsel has requested the backup to, you know, these numbers, including the asset values?

A It -- I'm not sure if it was his counsel or one of the other related-entity counsels.

Q Okay. But you're aware that a request was made for the details regarding the asset values and the other aspects of this?

A Yes.

Q Those were -- were those formal requests or informal requests?

A They were certainly at my deposition.

Q Right. But you haven't seen a document request or anything like that, have you?

A No.

Q Did the Debtor make a decision as to whether or not to provide the rollup, the backup information to Mr. Dondero or the entities acting on his behalf?

A Yes.

Q And what did the Debtor decide?

A We would not do that.

Q And why did the Debtor decide that?

A Well, I think that's pretty standard. The underlying documentation and the specific terms of the model are very specific, and they are -- they are confidential business

information that runs through what we expect to spend and what we expect to receive and when we expect to sell assets and then receive proceeds, and the prices at which we expect to sell them.

To the extent that any entity wants to have that information as a potential bidder, that would be very detrimental to our ability to maximize value. So, typically, I wouldn't expect that to be given out, and I would not approve it to be given out here.

Q Did the Debtor disclose to Mr. Dondero's counsel or counsel for one of his entities the agreement in principle with UBS before the updated plan analysis was filed last night?

A I believe that disclosure was done a while ago, to Mr. Lynn.

Q So, to the best of your -- so, to the best of your knowledge, the Debtor actually shared the specifics of the agreement with UBS with Mr. Dondero and his counsel before last night?

A Yes. I have specific personal knowledge of it because we had to ask UBS for their permission, and they agreed.

Q Okay.

MR. MORRIS: All right. Let's move on to 1129(b), Your Honor, the cram-down portion.

BY MR. MORRIS:

Q Are you aware, Mr. Seery, how various classes have voted under the plan?
A I am generally, yes.
Q Okay. Did any class vote to reject the plan, to the best of your knowledge?
A I don't -- I guess it depends on how you define the class. I think the answer is that I don't believe that, when you count the full votes of the -- the allowed claims and the votes in any class, I don't believe any of the classes voted to reject the plan.
Q What type of claims are in Class 8?
A General unsecured claims.
Q And what percentage of the dollar amount of Class 8 voted to accept?
A It's -- I think it's near -- now with the Daugherty agreements, it's near a hundred percent of the third-party dollars. I don't know the individual employees' claims off the top of my head.
Q All right. And what about the number in Class 8? Have a majority voted to accept or reject in Class 8?
A If you include the employee claims -- which, again, we think have no dollar amounts -- then I think it's a majority would have rejected. The vast dollar amounts did accept.
Q Okay. Let's talk about those employees claims for a moment. Do you have an understanding as to the basis of the

claims?
A Yes.
Q What's your understanding of the basis of the claims?
A Most of the claims are based on deferred compensation, and that's the 2005 Highland Capital Management bonus plan. And that bonus plan provides certain deferred payment amounts to the employees to be paid over multiple-year periods, provided that they are in the seat when the payment is due. That's the vesting date.
Q Okay.
MR. MORRIS: Your Honor, just as a note-keeping matter, the deferred compensation plan and the annual bonus plan are Exhibits 6F and 6G, respectively, and they're on Docket 1822.
THE COURT: All right.
BY MR. MORRIS:
Q And Mr. Seery, are you generally familiar with those plans?
A I am, yes.
Q In order to receive benefits under the plans, are the employees required to be employed at the time of vesting?
A Yeah. Our counsel refers to them, various terms, but generally -- our outside labor counsel. They're referred to as seat-in-the-seat plans, meaning that your seat has to be in a seat at the office at the day that the payment is due. If

you're terminated for cause or if you resign, you're not entitled to any payment.

So either you're there and you receive it or you're not and you don't. The only exception to that, I believe, is death and disability. Or disability.

Q All right. Did the Debtor terminate the annual bonus plan?

A Yes, we did.

Q And in what context did the Debtor terminate the annual bonus plan?

A Well, we had discussion on it last week. As Mr. Dondero had also testified, the plan was to terminate all the employees prior to the transition. That's well known among the employees. The board terminated the 2005 bonus plan and instead replaced it with a KERP plan that was approved by this Court.

Q And what was your understanding of the consequences of the termination of the bonus plan for -- for purposes of the claims that have been asserted by the employees who rejected in Class 8?

A It's clear that, under the 2005 HCMLP bonus plan, no amounts are due because the plan has been terminated.

Q All right. Do you have an understanding as to when payments become due under the deferred compensation -- under the compensation plan?

A I do, yes.
Q And when are they due?
A The next payments are due in May.
Q And what is the Debtor intending to do with respect to the objecting employees?
A The Debtor will have terminated all those employees before that date.
Q All right. So, what's -- what are the consequences of their termination vis-à-vis their claims under the deferred compensation plan?
A They won't have any claims.
Q Okay. So is it the Debtor's view that the employees who voted to reject in Class 8 have no valid claims under the annual comp -- annual bonus plan or the deferred compensation plan?

MR. RUKAVINA: Your Honor, this is Davor Rukavina. With due respect, Your Honor, these employees have voted. The voting is on file. There has been no claim objections to their claims filed. There's been no motion to designate their votes filed. So Mr. Seery's answer to this is irrelevant. They have votes -- pursuant to this Court's disclosure statement order, they have votes and they have counted, and now Mr. Seery is attempting to basically impeach his own balloting summary.

THE COURT: Mr. Morris, what is your response?

MR. MORRIS: The point of cram-down, Your Honor, is it fair and equitable. Does -- does -- is it really fair and equitable to the 99 percent of the economic interests to allow 24 employees who have no valid claims to carry the day here? And this is -- that's what cram-down is about, Your Honor.

THE COURT: All right. I overrule the objection.

BY MR. MORRIS:

Q Let's talk about Class 7 for a moment, Mr. Seery. That's the convenience class; is that right?

A That's correct.

Q How and why was that created?

A Well, initially, that was created because we had two types of creditors in the case, broadly speaking. We had liquidated claims, which were primarily trade-type creditors, and we had unliquidated claims, which were the litigation-type creditors. And so that class was created to deal with the liquidated claims, and the Class 8 would deal with the unliquidated claims, which were expected to, as we talked about earlier with respect to the monetization plan, take some time to resolve.

Q Was the creation of the convenience class a product of negotiations with the Committee?

A The initial discussion on how we set it up I believe was generated by the Debtor's side, but how it evolved and who would be in it and how it was treated in terms of

distributions was a product of negotiation with the Committee.
Q Okay. So how was the dollar threshold figure arrived at? How did you actually determine to create a convenience class at a million dollars?
A It was through negotiation with the Committee. So this was one of those items that moved a fair bit, in my recollection, through the many negotiations we had, heated negotiations on some of these items, with the Committee.
Q And are all convenience class -- all holders of convenience class claims holders of claims that were liquidated at the time the decision was made to create the class?
A I believe so. I don't think there's been -- other than -- well, there -- we just had some settlements today, and I think that relates to the employees, but those would be the only ones that there would be disputes about, and that would roll into the liquidat... the convenience class.
Q Okay. Finally, is there any circumstance under which holders of Class 10 or 11, Class 10 or Class 11 claims will be able to obtain a recovery under the plan?
A Theoretically, there's a circumstance, and that is if every other creditor in the case were to be paid in full, with interest at the federal judgment rate, including Class 9, which are the subordinated claims. If those all got paid in full, then theoretically the junior interest holders could

receive distributions.

However, based upon our projections, that would be wholly dependent on a significant recovery in the Litigation -- by the Litigation Trustee.

Q Okay. Let's move now to questions of the Debtor release and the plan injunction. Is the Debtor providing a release under the plan?

A Yes.

Q Is anyone other than the Debtor providing a release under the plan?

A No.

Q Who is the Debtor proposing to release under the plan?

A The release parties are pretty similar to what you typically would see, in my experience, in most plans. You have the independent board, myself as CEO and CRO, the professional -- the Committee members, the professionals in the case, and the employees that we reached agreement with respect to certain of them who have signed on to a stipulation, and others, get a broader release for negligence.

Q Okay. Is the Debtor aware of any facts that might give rise to a colorable claim against any of the proposed release parties?

A Not with respect to any of the release parties. So the -- obviously, I don't think there's any claims against me. But the same is true with respect to the oversight board, the

independent board.

The Committee has been, you know, working with us hand-in-glove, and I think if they thought we -- there was something there, we would have heard it.

With respect to the professionals, we haven't seen anything as an independent board.

And with respect to the employees' that -- general negligence release, these are current employees and we have been monitoring them for a year and we don't have any evidence or anything to suggest that there would be a claim against them.

Q Are there conditions to the employees' release?

A There are. So, the employee release, as we talked about earlier, was highly negotiated with the Committee. It requires that employees assist in the monetization efforts, which is really on the transition and the monetization. They don't have to assist in bringing litigations against anybody, so that's not part of what the provision requires. But it does require that they assist generally in our efforts to monetize assets.

We don't think that's going to be significant, but if there are individual questions or help we need, we certainly would reach out to them. If it's significant time, that will be a different discussion.

And then with respect to the two senior employees who

signed the stipulation, they have to give up a part of their distribution for their release.

Q All right. I think you just alluded to this, but has the release been the subject of negotiation with the Creditors' Committee?

A Yeah. We've touched on it a bunch of times, and we certainly, unfortunately, let it spill over into the court a couple times. It was a hotly-negotiated piece of the plan.

Q Okay. Has the Committee indicated to the Debtor in any way that anybody subject to the release is the subject of a colorable claim?

A Anyone subject to the release? No.

Q Yeah. All right. Let's talk about the plan injunction for a moment. Are you familiar with the plan injunction?

A Broadly, yes.

Q And what is your broad understanding of the plan injunction?

A Anybody who has a claim or thinks they have a claim will broadly be enjoined from bringing that, other than as it's satisfied under the plan or else ultimately bringing it before this Court. And that's the gatekeeper part, which is a little bit of combining the two pieces.

Q And what's your understanding of the purpose of the injunction?

A It's really to prevent vexatious litigation. We, as

independent directors, stepped into what I think most people would fairly say is one of the more litigious businesses and enterprises that they've seen. And we have a plan that will allow us to monetize assets for the benefit of the creditor body, provided we're able to do that and not have to put out fires every day on different fronts. So what we're hoping to do with the injunction is ensure that we can actually fulfill the purposes of the plan.

Q All right. Let's talk about some of the litigation that you're referring to.

MR. MORRIS: Can we put up on the screen the demonstrative for the Crusader litigation?

BY MR. MORRIS:

Q And Mr. Seery, I would just ask you to kind of describe your understanding in a general way about the history of the Crusader litigation.

MR. MORRIS: And, Your Honor, just to be clear here, this is a demonstrative exhibit. As you can see in the footnotes, it's heavily footnoted to the documents and to -- and, really, to the court cases themselves. The documents on the exhibit list include the dockets from each of the underlying litigations. And I just want to just have Mr. Seery describe at an extremely high level some of the litigation that the Debtor has confronted over the years, you know, as the driver, as he just testified to, for the decision

to seek this gatekeeper injunction.

THE COURT: All right.

BY MR. MORRIS:

Q So, Mr. Seery, can you just describe kind of in general terms the Crusader litigation?

A Yeah. I apologize to the Redeemer team for maybe not doing this justice. But this is litigation that came out of a financial crisis upheaval related to this fund. Disputes arose with respect to the holders of the interests, which were the -- ultimately became the Redeemers, and Highland as the manager.

That went through initial litigation, and then into the Bermuda courts, where it was subject to a scheme. The scheme required or allowed for the liquidation of the fund and then distributions to the -- to the holders, and then deferred many of the payments to Highland.

At some point, Highland, frustrated that it wasn't able to get the payments, decided to just take them, and I think, you know, fairly -- can be fairly described, at least by the arbitration panel, as coming up with reasons that may not have been wholly anchored in reality as to what its reasons were for taking that money.

That led to further disputes with the Redeemers, who then terminated Highland and brought an arbitration action against Highland. They were successful in that arbitration and

received a $137 arbitration award. And right up to the petition date, that arbitration pursued. When they finally got their -- the arbitration award, they were going to Delaware Chancery Court to file it and perfect it, and the Debtor filed.

Q Okay.

MR. MORRIS: Let's go to the next slide, the Terry/Acis slide. If we could just open that up a little bit. It's -- as you can imagine, Your Honor, it's a little difficult to kind of summarize the Acis/Terry saga in one slide, but we've done the best we can.

BY MR. MORRIS:

Q Mr. Seery, can you describe generally for Judge Jernigan, who is well-versed in the matter, the broad overview of this litigation?

A There's clearly nothing I can tell the Court about the bankruptcy that it doesn't already know. But very quickly, for the record, Mr. Terry was an employee at Highland. He also has a partnership interest in Acis, which was, in essence, the Highland CLO business. He -- and he got into a dispute with Mr. Dondero regarding certain transactions that Mr. Dondero wanted to enter into and Mr. Terry didn't believe were appropriate for the investors.

Strangely, the assets that underlie that dispute are still in the Highland portfolio, both Targa (phonetic) and Trussway.

Mr. Terry was terminated, or quit, depending on whose side of the argument you take. Mr. Terry then sought compensation in the arbitration pursuant to the partnership agreement. Ultimately, he was awarded an arbitration award of roughly $8 million.

When he went to enforce that -- that was against Acis. When he went to enforce that against Acis, which had all the contracts, Highland went about, I think, terribly denuding Acis and moving value. Mr. Terry ultimately was able to file an involuntary against Acis, and after a tremendous amount of litigation had a plan confirmed that gave him certain rights in Acis and any ability to challenge certain transactions with respect to Highland that formed the basis of his claims in the Highland bankruptcy.

That wasn't the end of the saga, because Highland commenced a litigation -- well, not Highland, but HCLOF and others, directed by others -- commenced litigation against Mr. Terry in Guernsey, an island in the English Channel. That litigation wound its way for a couple -- probably close to two years, at least a year and a half, and ultimately was -- it was dismissed in Mr. Terry's favor.

While that was pending, litigation was commenced in New York Supreme Court against Mr. Terry and virtually anybody who had ever associated with him in the business, including -- including some of the rating agencies. That was withdrawn as

part of our efforts working with DAF to try to bring a little bit of sanity to the case. But it was withdrawn without prejudice.

But ultimately, you know, we've agreed to a claims settlement, which was approved by this Court, with Acis and Mr. Terry.

Q All right.

MR. MORRIS: How about UBS? Can we get the UBS slide?

THE WITNESS: I should mention that there's other litigations involving Mr. Terry and Highland individuals that are outstanding, I believe, in Texas court. We have not yet had to deal with those.

BY MR. MORRIS:

Q Okay. Can you describe for the Court your general understanding of the UBS litigation?

A Again, UBS comes out of the financial crisis. It was a warehouse facility that UBS had established for Highland. It actually was a pre-crisis facility that was restructured in early '08, while the markets were starting to slide but before they really collapsed. That litigation started after Highland failed to make a margin call. UBS foreclosed out -- or it wasn't really a foreclosure, because it's a warehouse facility, but basically closed out all the interest and sought recovery from Highland for the shortfall.

Highland was one of the defendants, but there are numerous defendants, including some foreign subsidiaries of Highland.

That case wend its way through the New York Supreme Court, up and down between the Supreme and the Appellate Division, which is the intermediate appellate court in New York. Incredibly litigious effort over virtually every single item you could possibly think of.

Ultimately, UBS got a judgment for $500-plus million and -- plus prejudgment interest against two of the Highland subsidiaries. It then sought to commence action up -- enforce its judgment through various theories against Highland. That is part of the settlement that we have -- it's been part of the lift stay motion here, the 3019, as well as the 3018, and as well as the ultimate settlement we've discussed today.

Q Okay. Moving on to Mr. Daugherty, can you describe for the Court your understanding of the Daugherty litigation?

A The Daugherty litigation goes back even further. It did -- I think the original disputes were -- or, again, started to happen between Mr. Daugherty and Mr. Dondero even prior to the crisis, but Mr. Dondero -- Daugherty certainly stayed with Highland post-crisis. And then when Mr. Daugherty was severed or either resigned or terminated from his position, there was various litigations that began between the parties very intensely in state court, one of the more nasty litigations that you can imagine, replete with salacious allegations and

press releases.

That litigation then led to an award originally for Mr. Daugherty from HERA, which was an entity that had assets that Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay a judgment against Highland. Ultimately, litigations were commenced in both the state court and the Delaware Chancery Court. Those litigations, many of those continue, because they're not just against the entities but specific individuals. Mr. Daugherty got a voting -- a claim allowed for voting purposes in our case of $9.1 million, and we've since reached an agreement with Mr. Daugherty on his claim, save for a tax case which we announced earlier that relates to compensation, claimed compensation with respect to a tax distribution, which we have defenses for and he has claims for.

MR. MORRIS: All right. We can take that down, please.

BY MR. MORRIS:

Q And let's just talk for a few minutes about some of the things that have happened in this case. Did Mr. Dondero engage in conduct that caused the Debtor to seek and obtain a temporary restraining order?

A Yes, he did.

Q And did the Debtor -- did Mr. Dondero engage in conduct that caused the Debtor to seek and obtain a preliminary

injunction against him?
A Yes.
Q And has the Debtor filed a motion to hold Mr. Dondero in contempt for violation of the TRO?
A Yes.
Q Are you aware that -- of the CLO-related motion that was filed in mid-December?
A It's similar in that these are controlled entities that brought similar types of claims against the Debtor and interfered in similar ways, albeit not as directly threatening with respect to the personnel of the Debtor.
Q Okay. And you're aware of how that -- that motion was resolved?
A I know we resolved it, and I'm drawing a blank on that. But --
Q All right. Are you aware, did Mr. Daugherty also object to the Acis and HarbourVest settlements, or at least either him or entities acting on his behalf?
A I think you meant Mr. Dondero. I don't believe Mr. Daugherty did.
Q You're right. Thank you. Let me ask the question again. Thank you for the clarification. We're almost done. To the best of your knowledge, did Mr. Dondero or entities that he controls file objections to the Acis and HarbourVest settlements?

A Yes, they did.
Q And we're here today with this long recitation because the remaining objectors are all Mr. Dondero or entities owned or controlled by him; is that right?
A That's correct.
Q All right.
MR. RUKAVINA: Your Honor, I didn't have a chance to object in time. Entities owned or controlled by Mr. Dondero. There's no evidence of that with respect to at least three of my clients, and this witness has not been asked predicate questions to lay a foundation. Mr. Dondero does not own or control the three retail (inaudible). So I move to strike that answer.
MR. MORRIS: Your Honor, I withdraw with respect to the three funds. It's fine.
THE COURT: All right. With that withdrawal, then I think that resolves the objection.
MR. MORRIS: Uh, --
THE COURT: Or I overrule the remaining portion. Okay. Go ahead.
MR. RUKAVINA: That does, Your Honor. Thank you.
BY MR. MORRIS:
Q Are -- are -- is everything that you just described, Mr. Seery, the basis for the Debtor's request for the gatekeeper and injunction features of the plan?

A Well, everything I described are a part of the basis for that. I didn't describe every single basis with respect to why those --

Q So what are -- what are the other reasons that the Debtor is seeking the gatekeeper and injunction provisions in the plan?

A We really do need to be able to operate the business and monetize the assets without direct interference and litigation threats. We didn't go through some of the specifics, and I hesitate to burden the Court again, but the email to me, the email to Mr. Surgent, the testimony threatening -- effectively threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the court in previous weeks, statements by his counsel indicating that Mr. Dondero is going to sue me for hundreds of millions of dollars down the road.

I mean, this is nonstop. I'm an independent fiduciary. I'm trying to maximize value for the estate. I've got some guy who's threatening to sue me? It's absurd.

MR. MORRIS: Your Honor, I have no further questions, but what I would respectfully request is that we take just a short five-minute break. I'd like to just confer with my colleagues before I pass the witness.

THE COURT: All right. Five-minute break.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 1:58 p.m. to 2:06 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland. Mr. Morris, anything else?

MR. MORRIS: All right, Your Honor. Can you hear me?

THE COURT: I can, uh-huh.

MR. MORRIS: Okay. Mr. Seery, are you there?

THE WITNESS: I am, yes.

MR. MORRIS: I just have a few follow-up questions, Your Honor, if I may.

THE COURT: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Okay. Mr. Seery, we talked for a bit about the difference between the convenience class and the general unsecured claims. Do you recall that?

A Yes.

Q And that's the difference between Class 7 and 8; do I have that right?

A Yes.

Q And what is the recovery for claimants in Class 7, to the best of your recollection, the convenience class?

A It's 85 cents.

Q And under --

A On the dollar.

Q And under the projections that were filed last night, and we can call them up on the screen if you don't have total recall, do you recall what Class 8 is projected to recover now that we've taken into account the UBS settlement?
A Approximately 71.
Q Okay.
A Percent. 71 cents on the dollar.
THE COURT: Okay. The answer --
BY MR. MORRIS:
Q Okay. Do I this right --
THE COURT: The answer was a little garbled. Can you repeat the answer, Mr. Seery?
THE WITNESS: Approximately 71 cents on the dollar, Your Honor.
THE COURT: Okay. Thank you.
BY MR. MORRIS:
Q Okay. And do I have that right, that that 71 cents includes no value for potential litigation claims?
A That's correct. We didn't even put that in our projections at all.
Q So is it possible, depending on Mr. Kirschner's work, that holders of Class 8 claims could recover an amount in excess of 85 percent?
A It's possible, yes.
Q Okay. Are you aware that Dugaboy has suggested that the

Debtor should resolicit because their -- their -- the projections in the November disclosure statement were misleading?

A I'm aware that they've made allegations along those lines, yes.

Q Okay. Do you think the November projections were misleading in any way?

A No, not at all.

Q And why not?

A Well, the plan was -- the projections are for the plan, and they contain assumptions. And it was clear in the plan that those assumptions could change. So the value of the assets, which aren't static, does change. The costs aren't static. They do change. The amount of the claims, the denominator, was not static and would change.

Q Okay. And were the -- were the changes in the claims, for example, changes that were all subject to public viewing, as the Court ruled on 3018, as the settlement with HarbourVest was announced?

A Well, the plan -- the terms of the plan made clear that the Class 8 claims would -- would be whatever the final amounts of those claims were going to be. We did resolve the claims of HarbourVest and then ultimately the settlement announced today, but in front of -- in front of the world, in front of the Court, with a 9019 motion.

Q Okay. We had finished up with some questioning about the gatekeeper and the injunction provision. Do you recall that?
A Yes, I do.
Q And you had testified as to the reasons why the Debtor was seeking that particular protection. Do you recall that?
A Yes.
Q In the absence of that protection, does the Debtor have any concerns that interference by Mr. Dondero could adversely impact the timing of the Debtor's plan?
A Well, that's my opinion and what I testified to before. I think the -- the injunction -- the exculpation, the injunction, and the gatekeeper are really critical and essential elements of this plan, because we have to have the ability, unfettered by litigation, particularly vexatious litigation in multiple jurisdictions, we have to be able to avoid that and be able to focus on monetizing the assets and try to maximize value.
Q Is there a concern that that value would erode if resources and time and attention are diverted to the litigation you've just described?
A Absolutely. The focus of the team has to be on the assets' monetization, creative ways to get the most value out of those assets, and not on defending itself, trying to paper up some sort of litigation defense against vexatious litigation, and also spending time actually defending

ourselves in various courts.
Q Okay. Last couple of questions. If there was no gatekeeper provision in the plan, would you accept appointment as the Claimant Trustee?
A You broke up. No which provision?
Q If there was no gatekeeper provision in the -- in the confirmation order, would you accept the position as Claimant Trustee?
A No, I wouldn't. Just -- just like when I came on, there were -- there are some pretty essential elements that I mentioned before. One is indemnification. Two is directors and officers insurance. And three was a gatekeeper function. I want to make sure that we're not at risk, that I'm not at risk, for doing my job.
Q And I think you just said it, but if you were unable to obtain D&O insurance, would you accept the position as Claimant Trustee?
A No, I would not.
MR. MORRIS: I have no further questions, Your Honor.
THE COURT: All right. So, you went two hours and 34 minutes in total with your direct. So we'll now pass the witness for cross. And the Objectors get an aggregate of two hours and 34 minutes.
Who's going to go first?
MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

THE COURT: Okay. Go ahead.

MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit 6N, the ballot summary, Page 7 of 15 on the top.

MR. POMERANTZ: Mr. Morris, you're not on mute.

MR. MORRIS: Thank you, sir.

MR. RUKAVINA: Mr. Vasek, did you hear me? There it is.

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, are you familiar with this ballot tabulation that was filed with the Court and that has been admitted into evidence?

A Yes, I believe I've seen this.

Q Okay. And this says that 31 Class 8 creditors rejected and 12 Class 8 creditors accepted the plan, correct?

A That's correct.

Q And since then, I think we've heard that Mr. Daugherty and maybe two other employees have changed their vote to an accept; is that correct?

A That's correct, yes.

Q Okay. Other than three, those three employees that are changing, do you know of any other Class 8 creditors that are changing their votes?

A Mr. Daugherty is not an employee.

Q I apologize. Other than those three Class 8 creditors

that are changing their votes, do you know of any other ones that are changing their votes?
A No.
Q Okay. You didn't tabulate the ballots, did you?
A No, I did not.
Q Do you have any reason to question the accuracy of this ballot summary that's been filed with the Court?
A No, I do not.
Q Okay. You mentioned that many of the people that rejected the plan are former employees who you don't think will ultimately have allowed claims, correct?
A Not ultimately. I said they don't have them now.
Q Okay. Are you aware that the Court ordered that contingent unliquidated claims be allowed to vote in an estimated amount of one dollar?
A I'm aware of that, yes.
Q Okay. All right. Now, no motion to reconsider that order has been filed, correct?
A Not to my knowledge.
Q Okay. No objection to these rejecting employees' claims have been filed yet, correct?
A Correct.
Q Okay. And no motion to strike or designate their vote has been filed as of now, correct?
A Correct.

MR. RUKAVINA: You can take down that exhibit, Mr. Vasek.

BY MR. RUKAVINA:

Q Mr. Seery, the Debtor itself is a limited partnership; I think you confirmed that earlier, correct?

A Correct.

Q And its sole general partner is Strand Advisors, Inc., correct?

A Correct.

Q And to your understanding, the Debtor, as a limited partnership, is managed by its general partner, correct?

A Correct.

Q Okay. And Strand, that's where the independent board of you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm misspelling, misstating his name -- that's where the board sits, at Strand, correct?

A Yes.

Q Okay. And that board has been in place since about January 9, 2020?

A Yes.

Q Okay. Strand is not a debtor in bankruptcy, correct?

A No.

Q Okay. Do you have any understanding as to whether, under non-bankruptcy law, a general partner is liable for the debts of the limited partnership that it manages?

A I do.
Q Okay. What's your understanding?
A Typically, a general partner is liable for the debts of the partnership.
Q Okay. And under the plan, Strand itself is an exculpated party and a protected party and a released party for matters arising after January 9, 2020, correct?
A Yes.
Q Okay. You mentioned that you're the chief executive officer and chief restructuring officer in this case for the Debtor, correct?
A For the Debtor, yes.
Q Yeah. You are not a Chapter 11 trustee, right?
A No.
Q Okay. You are one of the principal authors of this plan, correct?
A Consultant.
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Rephrase.

BY MR. RUKAVINA:

Q -- one of the principal --

MR. RUKAVINA: I apologize.

BY MR. RUKAVINA:

Q You had input in creating this plan, didn't you?

A I did, yes.

Q Okay. And you're familiar with the plan's provisions, aren't you?

A Yes.

Q Okay. And you, of course, approve of the plan, correct?

A Yes.

Q Okay. And you are, of course, familiar generally with what the property of the estate currently is, correct?

A Yes.

Q Okay. And part of the purpose of the plan, I take it, is to vest that property in the Claimant Trust in some respects and the Reorganized Debtor in some respects, correct?

A I don't -- I don't know if that's a fair characterization. Some property -- maybe some property will stay with the Debtor, some will be transferred directly to the Trust.

Q Okay. All property of the estate as it currently exists will stay with the Debtor or go to the Trust, correct?

A Yes.

Q Okay. And under the plan, the Creditor Trust will be responsible for payment of prepetition claims, correct?

A Yes.
Q And under the plan, the Creditor Trust will be responsible for the payment of postpetition pre-confirmation claims, correct?
A Do you mean admin claims? I don't --
Q Sure.
A I don't understand your question. I'm sorry.
Q Yes. We can call them admin claims.
A Yeah. Those -- they'll be -- they will be paid on the effective date or in and around that time. So I'm not sure if that's actually going to be from the Trust, but I think it's actually from the Debtor, as opposed to from the Trust.
Q Okay. But after the creation of the Claimant Trust, --
A Uh-huh.
Q -- whatever administrative claims are not paid by that time will be assumed by and paid from the Claimant Trust, correct?
A I don't recall that specifically.
Q Is it your testimony that the Reorganized Debtor will be obligated post-effective date of the plan to pay any admin claims that are then unpaid?
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained. Rephrase.
BY MR. RUKAVINA:
Q Who pays unpaid admin claims under the plan once the plan

goes effective?
A I believe the Debtor does. The Reorganized Debtor.
Q Okay. The Reorganized Debtor also gets a discharge, correct?
A Yes.
Q Okay. And there is no bankruptcy estate left after the plan goes effective, correct?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
MR. RUKAVINA: Your Honor, I have the right to know what the objection to my question is.
THE COURT: I overruled.
MR. MORRIS: Okay.
THE COURT: I overruled the objection.
MR. RUKAVINA: Thank you.
BY MR. RUKAVINA:
Q Mr. Seery, do you remember my question?
A That whether there was a bankruptcy estate after the effective date?
Q Yes.
A There wouldn't be a bankruptcy estate anymore, no.
Q Okay. Under the plan, the creditors, to the extent that they have their claims allowed, the prepetition creditors, they're the beneficiaries of the Claimant Trust, correct?
A They are some of the beneficiaries, yes.

Q Okay. And you would be the Trustee, I think you said, of the Claimant Trust?
A Of the Claimant Trust, yes.
Q Okay. And you will have fiduciary duties to the beneficiaries of the Claimant Trust, correct?
A I believe I have some, yes.
Q Okay. Well, as the Trustee, you will have some fiduciary duties; you do agree with that?
A That's what I said, yes.
Q Okay. What's your understanding of what those fiduciary duties to the beneficiaries of the Claimant Trust will be?
A I think they'll be -- they are cabined to some degree by the provisions of the agreement, but generally there will be a duty of care and a duty of loyalty.
Q Do you feel like you'll have a duty to try to maximize their recoveries?
A That depends.
Q On what?
A My judgment on what's the -- if I'm exercising my duty of care and my duty of loyalty.
Q Okay. But surely you'd like to, whether you have a duty or not, you'd like to maximize their recoveries as Trustee, wouldn't you?
A Yes.
Q Okay. Now, in addition to the beneficiaries, which I

believe are the Class 8 and Class 9 creditors, the plan proposes to give non-vested contingent interests in the Trust to certain holders of limited partnership interests, correct?

A Yes.

Q Okay. And those non-vested contingent interests would only be paid and would only vest if and when all unsecured creditors and subordinated creditors are paid in full, with interest, correct?

A Yes.

Q Okay. And those non-vested contingent interests are a property interest, although they're an inchoate property interest, correct?

A I don't know. I think I testified in my deposition that I -- I reached for inchoate, but I'm not an expert in the definitions of property interests. I don't know if they're too ethereal to be considered a property interest.

Q Okay.

MR. RUKAVINA: Mr. Vasek, will you please pull up Mr. Seery's deposition at Page 215? And if you'll go to Page 200 -- can you zoom -- can you zoom that in a little bit? Mr. Vasek, can you zoom on that?

MR. VASEK: Just a moment. There's some sort of issue here.

MR. RUKAVINA: Okay. And then go to Page 216. Scroll down to 216, please.

MR. VASEK: Okay. I can't see it, so --

MR. RUKAVINA: Okay. Stay, stay where you are. Go down one more row.

BY MR. RUKAVINA:

Q Okay. Mr. Seery, can you see this?

A Yes.

Q Okay. So, I ask you on Line 21, "They may be a property interest, but inchoate only, correct?" And you answer, "That is my belief. I don't claim to be an expert on the different types of property interests," --

MR. RUKAVINA: Mr. Vasek, can you go to the next page?

BY MR. RUKAVINA:

Q (continues) "-- whether they be inchoate, reversionary, ethereal. I don't claim to be an expert on the different types of property interests."

Do you see that answer, sir?

A Yes.

Q And do you stand by your answer given on Lines 23 through Line 4 of the next page?

A Yes.

Q Okay. And these non-vested contingency -- contingent interests in the Claimant Trust, they may have some value in the future, correct?

A Yes.

MR. RUKAVINA: Okay. You can take that down, Mr. Vasek.

BY MR. RUKAVINA:

Q Have you tried to see whether anyone outside this case, or anyone at all, would pay anything for those unvested contingent interests to the Claimant Trust?

A No.

Q Okay. Now, the Debtor is a registered investment advisor under the Investment Advisers Act of 1940; is that correct?

A That's correct.

Q And under that Act, the Debtor owes a fiduciary duty to the funds that it manages and to the investors of those funds, correct?

A Clearly to the funds, and generally to the investors more broadly, yes.

Q Okay. And would you agree that that duty compels the Debtor to look for the interests of the funds and the investors of those funds ahead of its own interests?

A Generally, but it's a much more fine line than what you're describing. It means you can't -- the manager can't put its own interests in front of the investors and the funds. It doesn't mean that the manager subordinates its interest in the -- to the investors and the funds.

MR. RUKAVINA: Well, Mr. Vasek, please pull up the October 20th transcript at Page 233.

MR. MORRIS: What transcript is this?

MR. RUKAVINA: October 20, 2019. Mr. Vasek has the docket entry.

MR. MORRIS: Oh, so it's the -- Your Honor, I just do want to point out that Mr. Rukavina objected, in fact, to the use of trial transcripts, but we'll get to that when we put on our evidence, when we finish up.

MR. RUKAVINA: Well, Your Honor, I believe that you're allowed to use a trial transcript to impeach testimony, which is what I'm going to do now.

So, for that purpose, Mr. Vasek, if you could -- are you on Page 233?

THE COURT: And just so the record is clear, this is from October 2020, not October 2019, which is, I think, what I heard. Continue.

MR. MORRIS: Your --

MR. RUKAVINA: Your Honor, I apologize, you did hear that and I did make a mistake. Yes, this is at Docket 1271.

Mr. Vasek, if you'll scroll down, please. Okay. No, stop there.

BY MR. RUKAVINA:

Q And you see on Line 16, sir, you're asked your understanding, and then you answer, "Okay." "And in exercising those duties, the manager, under the Advisers Act, has a duty to subordinate its interests to the interests of

those investors in the CLOs, correct?" And you answer --

MR. RUKAVINA: Go down, Mr. Vasek.

BY MR. RUKAVINA:

Q -- "I think -- I think, generally, when you think about the fiduciary duty, and I think that we -- I want to make sure I'm very specific about this, is that the manager has a duty, fiduciary duties -- there's a whole bunch of legal analysis of what they are, but they are significant -- that the manager owes to the investors. And to the extent" --

MR. RUKAVINA: Scroll down, please.

BY MR. RUKAVINA:

Q "And to the extent that the manager's interests would somehow be -- somehow interfere with the investors' in the CLO, he is supposed to -- he or she is supposed to subordinate those to the benefit of the investors."

Did I read that accurately, Mr. Seery?

A You did.

Q Was that your testimony on October 20th last?

A Yes.

Q Okay. Are you willing to revise your testimony from a few minutes ago that the manager does not have to subordinate its interests to the interests of the investors?

A No. I think that's very similar.

Q Okay.

A You left out the part about garbled up top where I said it

was nuanced, almost exactly what I just said. On Line 9, I believe, on the prior page.

Q Well, I heard you say a couple of minutes ago, and maybe I misunderstood because of the WebEx nature, that the manager does not have to subordinate its interests to the interests of the investors. Did I misheard you say that a few minutes ago?

A I think you misheard it. I said it's a nuanced analysis, and it's -- it's pretty significant. But the manager does subordinate his general interest and assures that the CLO or any of the investors' interests are paramount, but he doesn't subordinate every single interest.

For example, and I think it's in this testimony, the manager, if the fund isn't doing well, doesn't just have to take his fee and not get paid. He's allowed -- entitled to take his fee. He doesn't subordinate every single interest of his. He doesn't give up his home and his family. So it's -- it's a nuanced analysis. The interests of the manager are subordinated to the interests of the investors and the fund. I don't -- I don't disagree with anything I said there. I think I'm consistent.

Q Okay.

MR. RUKAVINA: You can take that down, Mr. Vasek.

BY MR. RUKAVINA:

Q So, how do you describe, sir, the fiduciary duty that the Debtor owes to the funds that it manages and to the investors

in those funds?

MR. MORRIS: Objection to the -- to the extent it calls for a legal conclusion, Your Honor. I just want to make sure we're -- we're asking a witness for his lay views.

THE COURT: Okay. I overrule the objection. He can answer.

THE WITNESS: Yes. As a manager of a fund, the manager is a fiduciary to the fund, and sometimes to the investors, depending on the structure of the fund. Some funds are purposely set up where the investors are actually debt-holders, and their interests are much more cabined by the terms of the contract, as opposed to straight equity holders. But the manager has a duty to seek to maximize value of the assets in the best interests of the underlying -- of the fund and the underlying investors, to the extent that it can, within the confines and structure of the fund.

BY MR. RUKAVINA:

Q Okay. And these duties as you just described them, they would apply to the Reorganized Debtor, correct?

A They would apply to the Reorganized Debtor to the extent that it's a manager for a fund, not, for example, with respect to necessarily interests -- the inchoate interests that we talked about earlier.

Q Sure. And I apologize, I meant just for the fund. And if the manager, the Reorganized Debtor, breaches those duties,

then it's possible that there's going to be liability, correct?

A It's possible.

Q Okay. Now, under the plan, the limited partnership interests in the Reorganized Debtor will be owned by the Claimant Trust, correct?

A Yes.

Q Okay. And there's a new entity called New GP, LLC that will be created or already has been created, correct?

A Yes.

Q Okay. And that entity will hold the general partnership interest in the Reorganized Debtor, correct?

A I believe that's correct.

Q Okay. And that entity -- that being New GP, LLC -- will also be owned by the Claimant Trust, correct?

A Yes.

Q Okay. Who will manage the Reorganized Debtor?

A The G -- the GP will manage the Reorganized Debtor.

Q Okay. And will there be an officer or officers of the Reorganized Debtor, or will it all be managed through the GP?

A It'll be managed through the GP.

Q Okay. And who will manage the GP?

A Likely, I will.

Q Okay. That's the current plan, that you will?

A I'll be the Claimant Trustee, and I believe that I'll be

responsible for any assets that remain in the Reorganized Debtor, yes.

Q Okay. Right now, the Debtor is managing its own assets as the Debtor-in-Possession, right?

A Yes.

Q And it is managing various funds and CLOs, right?

A Yes.

Q Okay. And right now, the Debtor is attempting to reduce some of its assets to money, like the promissory notes that you mentioned earlier that the Debtor filed suit on, correct?

A Yes.

Q And the Debtor is trying to reduce some of its assets to money, like the promissory notes, to benefit its creditors, correct?

A Yes.

Q Okay. And correct me if I'm wrong, but the Committee has filed various claims and causes of action against Mr. Dondero, correct?

A They -- they've filed some. I haven't -- I haven't looked at their (indecipherable) closely, but --

Q Okay.

A -- some are preserved in the case.

Q You understand --

A In the plan. I'm sorry.

Q You understand that the Committee is doing that for the

benefit of the estate, correct?
A Yes.
Q And you understand that they're also doing that for the benefit of creditors, correct?
A Yes.
Q Okay. And under the plan, just so that I'm clear, those claims that the Committee has asserted will be preserved and will vest in either the Claimant Trust or the Litigation Sub-Trust, correct?
A Yes.
Q Okay. And under the plan, the Reorganized Debtor would continue to manage its assets, correct?
A Yes.
Q And it would continue to manage the Funds and the CLOs, correct?
A Yes.
Q And the Claimant Trust would attempt to liquidate and distribute to its beneficiaries the assets that are transferred to it, correct?
A Yes.
Q Okay. And you mentioned that the Claimant Trust will have an Oversight Board comprised of five members, right?
A Yes.
Q And four of them will be the people that are currently on the Committee, right?

A Yes.
Q And the fifth is David Pauker, and I think you mentioned that he's independent. David Pauker is the fifth member, right?
A Yes.
Q Who -- who is he?
A David Pauker is a very well-known professional in the restructuring world. He's a long-time financial advisor in -- in reorganizations. He's served on numerous boards in restructuring -- restructurings.
Q Okay. So, other than a different corporate structure and the Claimant Trust, the monetization of assets for the benefit of creditors would continue post-confirmation as now, correct?
A I -- I believe so. I'm not exactly sure what you asked there.
Q No one is putting in any new money under the plan, are they?
A No. No.
Q Okay. There's no exit financing contingent on the plan being confirmed, right?
A You mean no exit -- the plan is not contingent on exit financing. I think you just mixed up your -- your financing and your plan.
Q I apologize. There's no exit financing in place today, correct?

A No.
Q Okay. So, post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors the same as you are today, correct?
A Similar, yes.
Q Okay. And just like the Committee has some oversight role in the case, the members of the Oversight Board will have some oversight role post-confirmation, correct?
A Yes.
Q Okay. You don't need anything in the plan itself to enable you to continue managing the Debtor and its assets, correct?
A I don't need anything in the plan?
Q Correct.
A I don't -- I don't understand the question. Can you rephrase it?
Q Well, you are managing the Debtor and its assets today, correct?
A Yes.
Q Okay. Nothing in the plan is going to change that, correct?
A Well, it's going to change it a lot.
Q Okay. Well, with respect to you managing the Funds and the CLOs, you don't need anything in the plan that you don't have today to keep managing them, do you?

A No. The Debtor manages them, and I will -- I'm the CEO and I'll be in a similar position with a different team.
Q Okay. And I believe you told me that you expect the Debtor to administer the CLOs for two or three years, maybe?
A However long it takes, but we expect -- our projections are that we'd be able to monetize most of the assets within two years.
Q Does that include the CLOs?
A It does, yes.
Q Okay. Now, you're going to be the person for the Reorganized Debtor in charge of managing the CLOs, correct?
A I'll be the person responsible for managing the Reorganized Debtor. The Reorganized Debtor will be the manager of the CLOs.
Q Okay. But the buck will stop with you at the Reorganized Debtor, right?
A Yes.
Q Okay. You're going to have a team of employees and outside professionals helping you, but ultimately, on behalf of the Reorganized Debtor, you're going to be the one in charge of managing the CLOs, correct?
A Yes.
Q Okay. That means that you'll also be making decisions as to when to sell assets of the CLOs, correct?
A Yes.

Q Okay. And to be clear, the CLOs, they own their own assets, whatever they are, and the Debtor just manages those assets, right?
A Correct.
Q The Debtor doesn't directly own those assets, right?
A No.
Q And currently there's more than one billion dollars in CLO assets that the Debtor manages?
A Approximately.
Q Yeah. And the Debtor receives fees for its services, correct?
A Yes.
Q Can you generally describe how the amount of those fees is calculated and paid, if you have an understanding?
A How the fees are calculated and paid?
Q Yes, sir.
A It's a percentage of the assets.
Q Assets administered or assets sold in any given time period?
A Administered.
Q Okay. So the sale of CLO assets does not affect the fees that the Reorganized Debtor would receive under these agreements?
MR. MORRIS: Objection to the form of the question.
THE COURT: Over --

THE WITNESS: That's not correct.

THE COURT: Overruled.

BY MR. RUKAVINA:

Q Okay. What is not correct about that?

A When you sell the assets, the amount administered shrinks, so you have less fees.

MR. RUKAVINA: Your Honor, the answer cut out at the very end. You have less--?

THE WITNESS: Fees.

BY MR. RUKAVINA:

Q Fees? I understand. Okay. So are you saying that there is a disincentive to the Reorganized Debtor to sell assets in the CLOs?

A No.

Q Okay. Is there an incentive to the Reorganized Debtor to sell assets in the CLOs?

A To do their job correctly, yes.

Q Okay. And the Debtor wishes to assume those contracts because the Debtor will get those fees going forward and there'll be a profit, even after the expenses of servicing those contracts are taken out, correct?

A They are profitable. That's one of the reasons that we're assuming, yes.

Q Okay. Now, over my objection, you testified that the CLOs have agreed to the assumption of these contracts, right?

A Yes.
Q Okay. Is there anything in the record other than your testimony here today demonstrating that?
A I believe there is, yes.
Q What do you believe there is in the record other than your testimony?
A I believe we filed a notice of assumption.
Q Okay. My question is a little bit different. You testified that the CLOs, over my objection, have agreed to the assumption. You did testify so, right?
A Yes.
Q Okay. What is there in the record, sir, from the CLOs confirming that?
A You mean today's record?
Q Yes, sir.
A I'm the only one who's testified so far.
Q Okay. Are you aware of anything in the exhibits that would confirm your testimony?
A Not that I know of.
Q Has there been an agreement with the CLOs that's been reduced to writing?
A Yes.
Q So there is a written agreement with the CLOs providing for assumption?
A Yes.

Q A signed, written agreement?
A No, it's -- it's email.
Q Okay. When was this email agreement reached?
A Within the last couple weeks. There's a number of back and forths where that was agreed to, and I believe we filed a notice of assumption.
MR. RUKAVINA: Mr. Vasek, if you will please pull up Mr. Seery's January 29th deposition.
BY MR. RUKAVINA:
Q Mr. Seery, you remember me deposing you last Friday, correct?
A Yes.
Q And you remember me asking you if there was a written agreement in place with the CLOs?
A I don't recall specifically.
MR. RUKAVINA: Okay. Mr. Vasek, if you would please scroll to that. Okay. Stop there.
BY MR. RUKAVINA:
Q Sir, you'll recall I also deposed you January 20th, right?
A Yes.
Q Okay. And do you remember that we had some discussion regarding whether the CLOs would consent or not?
A Yes.
Q Okay. And do you remember telling me something like that like you think that they will and that's still in the works on

January 20th?
A I don't recall specifically, but if you say that's what it says.
Q Okay. Well, here I'm asking you on January 29th, Line 17, "I asked you before and you didn't have anything in writing by then, so let me ask now. As of today, do you have anything in writing from the CLOs consenting to the assumption of those management agreements?" I'm sorry. Contracts. Answer, "I don't believe that I do. It could be on my email I opened. I don't recall."
MR. RUKAVINA: Scroll down, Mr. Vasek.
BY MR. RUKAVINA:
Q Okay. Then I ask, "Do you have an understanding of whether those CLOs have consented in writing to the assumption of the management agreements?" And you answer, "I believe they have. The actual final docs haven't been completed, but I believe they have agreed in writing, yes."
Then I ask --
MR. RUKAVINA: Scroll down a little bit more.
BY MR. RUKAVINA:
Q I ask, "Do you expect the final docs to be completed before Tuesday's confirmation hearing?" Answer, "I don't know whether they will be done by Tuesday."
Did I read all of that correctly, sir?
A Other than your misstatement. The word was "unopened."

Q Thank you. So, let me ask you again today. As of today, is there a written agreement that has been signed by the parties providing for the assumption of the CLO agreements?
A When phrased the way you did, is it signed by the parties, no.
Q Okay.
MR. RUKAVINA: You can take that down, Mr. Vasek.
BY MR. RUKAVINA:
Q I think -- I'm not sure if you quantified this earlier, but it might help. I believe that the Reorganized Debtor projects that it will generate revenue of $8.269 million post-reorganization from managing the CLO contracts, correct?
A It's in that neighborhood. I did not testify to that earlier.
Q That's what I meant. And when I asked you at deposition, you were able to give me an estimate of how much it would cost to generate that revenue, correct?
A I was not?
Q You were? I'm sorry. Let me --
A Did you say I wasn't or I was?
Q Let me -- I apologize. Let me ask again. I talk too fast and I have an accent. You have been able to give an estimate of how much the Reorganized Debtor will expend to generate that revenue, correct?
A Yes.

Q Okay. Do you remember what your estimate is?
A I -- I think it was around $2 million a year. It was a portion of our employees plus the contracts.
Q Okay. So, over the life of the projection at $8.2 million, do you remember that you projected costs of about $3.5 to $4 million to generate that revenue?
A If -- if you are representing that to me, I'd accept it. Yes, that sounds about right.
Q Well, suffice it to say you're projecting at least $4 million in net profit over the next two years for the Reorganized Debtor from managing the CLO agreements, correct?
A Net profit is not a fair, fair way to analyze it, no.
Q Okay. Are you projecting any profit for the Reorganized Debtor from managing the CLO agreements post-confirmation?
A Yes.
Q Okay. Do you have an estimate of what that profit is?
A General overview are the contracts are profitable to about the tune of $4 million over that period.
Q Okay. Thank you. If the Reorganized Debtor makes a profit post-confirmation, is it fair to say that that would then be dividended up or distributed up to the partners, ultimately to the Claimant Trust?
A I don't think that's fair to say, no.
Q Okay. So, if the Reorganized Debtor makes a profit post-confirmation, where does that profit go?

A The Reorganized Debtor -- what kind of profit? I don't understand your question.
Q Okay. I apologize if I'm being too simplistic about it. If a business, after it takes account of its expenses to generate revenue, has any money left over, would that be profit to you?
A Yes.
Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will make a profit?
A I don't know.
Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will lose money?
A I think there will be costs, and the costs will exceed the -- the amount that it generates on an income basis, yes.
Q Okay. Thank you.
MR. RUKAVINA: Mr. Vasek, if you'll please pull up the plan, the injunctions, and releases. 9F.
(Pause.)
BY MR. RUKAVINA:
Q I apologize, Mr. Seery.
MR. RUKAVINA: So, Mr. Vasek, if you'll go to the bottom of the Page 51. Stop there.
BY MR. RUKAVINA:
Q So, I'm going to read just the first couple sentences here, Mr. Seery, if you'll read it along with me. Subject --

this is the bottom paragraph: Subject in all respects to Article 12(b), no enjoined party may commence or pursue a claim or cause of action of any kind against any protected party that arose or arises from or is related to the Chapter 11 case, the negotiation of the plan, the administration of the plan, or property to be distributed under the plan, the wind-down of the business of the Debtor or Reorganized Debtor.

I'd like to stop there. Do you see that clause there, Mr. Seery, talking about the wind-down of the business of the Debtor or Reorganized Debtor? Do you see that, sir?

A Yes.

Q Okay. Do I understand correctly that this provision we've just read means that, upon the assumption of these CLO management agreements, if the counterparties to those agreements want to take any action against the Reorganized Debtor, they first have to go through this channeling injunction?

A I believe that's what it says, yes.

Q Okay. Because the wind-down of the business of the Reorganized Debtor will include the management of these CLO portfolio management agreements, correct?

A Yes.

Q Okay. As well as the management of various funds that the Debtor owns, correct?

A Yes.

Q Okay. And would you agree with me that the new general partner, New GP, LLC, is also a protected party under the plan?
A I assume it is. I don't recall specifically.
Q I believe you discussed to some degree postpetition losses. I'd like to visit a little bit about those. Since January 9th, 2020, Mr. Dondero was not an officer of the Debtor, correct?
A Correct.
Q And since January 9th, 2020, he was no longer a director of Strand, correct?
A That's correct.
Q Since January 9th, 2020, until he was asked to resign, he was an employee, correct?
A Yes.
Q And about -- I'm trying to remember. About when did he resign? October something of 2020? Do you remember?
A I don't recall.
Q Okay. Do you recall if it was in October 2020?
A It was in the fall.
Q Okay. And he resigned because the independent board asked him to resign, correct?
A Yes.
Q Okay. And you mentioned that the estate has had a postpetition drop in the value of its assets and the assets

that it manages. Right?
A I believe I went through the estate's assets. The only asset that wasn't a direct estate asset was the hundred percent control of Select Equity Fund. I didn't talk about the Fund assets.
Q Okay. Do you recall that the disclosure statement that the Court approved states that, postpetition, there was a drop from approximately $566 million to $328 million in the value of Debtor assets and assets under Debtor management?
A Yes. That's the $200 million I walked through earlier.
Q Okay. And I believe you mentioned some of it was due to the pandemic, right?
A It certainly impacted the markets. The pandemic didn't cause a specific loss. It impacted the markets and the ability to work within those markets.
Q But you also believe that Mr. Dondero was responsible for something like a hundred million dollars of these losses, right?
A Probably more.
Q Okay. Mr. Dondero is not being released or exculpated for that, is he?
A No.
Q And while Mr. Dondero was an employee during the period of these losses, he answered to you as CEO and CRO, correct?
A Not during that period. I wasn't (audio gap) until later.

Q I'm sorry. As of January 9th, 2020, were you the CEO of the Debtor?
A No.
Q When did you become the CEO of the Debtor?
A I believe the order was July 9th, retroactive to a date in March.
Q July 9th, 2020?
A Correct.
Q Okay. And when did you become the CRO of the Debtor?
A At the same time.
Q Okay. So, between January and July 2020, you were one of the independent directors, correct?
A Yes.
Q Okay. So, during that period of time, would Mr. Dondero have answered to that independent board?
A Yes.
Q Okay. Now, if someone alleges that that independent board has any liability on account of Mr. Dondero's losses, that's released under this plan, isn't it?
A Yes.
Q Okay. And if someone alleges that Strand has any liability on account of Mr. Dondero's losses, that's released under this plan, correct?
A Yes.
Q Okay. And if someone believes that the Debtor -- that the

way that the Debtor has managed the CLOs or its funds postpetition gives rise to a cause of action in negligence, that's also released and exculpated in the plan, correct?

A I believe it would be. I'm not positive, but I believe it would be.

Q Well, let's be clear. The plan does not release or exculpate you or Strand or the board for willful misconduct, gross negligence, fraud, or criminal conduct, correct?

A No, it does not.

Q Okay. And I'm not, just so we're clear, I'm not alleging that, okay? So I want the judge to understand I'm not alleging that. But the plan does release and exculpate for negligence, right?

A Yes.

Q Okay. Where do you have an understanding a cause of action for breach of fiduciary duty lies on the spectrum of negligence all the way to criminal conduct?

A It's -- it's not -- generally not criminal, although I suppose that breach of fiduciary duty could be criminal. Typically, it's negligence, and that you would breach a duty for either duty of care, duty of loyalty. But it could slide to willful. And probably most of the instances where they come up are where someone has done something willfully or grossly negligent.

Q Okay. But -- and I would agree with you. But there are

certain breaches of fiduciary duty that are possible based on simple negligence, correct?

A They are, and in these instances, they don't -- they don't rise to actionable claims because they're indemnified by the funds.

Q Okay. You have to explain that to me. So, the negligence claim is not actionable because someone is indemnifying it?

A Typically, there's no way to recover because it's indemnified by the fund that the investor might be in. If it goes beyond that, then it wouldn't be.

Q Okay. So there are potential negligence breach of fiduciary duty claims that might be subject to these exculpations and releases that would not be indemnified?

A Gross negligence and willful misconduct, certainly.

Q Okay. Now, post-confirmation, post-confirmation, if the Debtor, or the Reorganized Debtor, rather, engages in negligence or any actionable conduct, that's when the channeling injunction comes into play, right?

A I don't quite understand your question.

Q Okay.

A Can you repeat that?

Q Sure. To your understanding, does the channeling injunction we're looking at right now -- and you can read it if you need to -- does it apply to purely post-confirmation alleged causes of action?

A It does apply to those, yes.
Q Okay. And it says that the Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable, and, only to the extent legally permissible and as provided for in Article 11, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.
Do you see that, sir?
A I do.
Q Okay. And this -- the Bankruptcy Court's exclusive jurisdiction here, that would continue after confirmation? Is that the intent behind the plan?
A It has -- it says what it says. Will have the sole and exclusive jurisdiction to determine whether a claim is colorable, and then, to the extent permissible, it'll have jurisdiction to adjudicate.
Q Okay. Nothing in this plan limits the period of the Bankruptcy Court's inquiry to the pre-confirmation time frame, correct?
A I don't believe it does, no.
Q Okay. Have you taken into account the potential that this bankruptcy case will eventually be closed with a final decree?
A Have I taken that into account?
Q Well, do you know what a final decree in Chapter 11 is?
A I do.

Q Okay. So, help me understand. If there's a final decree and the bankruptcy case is closed, then who do I go to, because the Bankruptcy Court has exclusive jurisdiction, to get this clearing injunction cleared?

MR. MORRIS: Objection to the form of the question, Your Honor.

THE COURT: Sustained. Rephrase.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Is it the plan's intent, Mr. Seery, that this channeling injunction that we just looked at would continue to apply even after a point in time in which the bankruptcy case is closed?

A I don't believe so.

MR. RUKAVINA: Again, Your Honor, someone -- I heard someone's phone right when he answered, and I didn't hear his answer, if he could please re-answer.

THE WITNESS: I don't -- I don't think if the case is closed that's the intention.

BY MR. RUKAVINA:

Q Okay. What about if there's a final decree entered?

MR. MORRIS: Objection, Your Honor. You know, the document kind of speaks for itself.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: Yeah. I don't -- I don't -- I'm not making a distinction between the case being closed and the

final decree. I believe in both instances they'll be pretty close to the same time and we'll make a judgment then as to how to close the case in accordance --

Q Okay.

A -- with the rules.

MR. RUKAVINA: Mr. Vasek, if you'll please scroll up to the beginning of this injunction. A little bit higher. Right there. Right there.

BY MR. RUKAVINA:

Q The very first clause, Mr. Seery, if you'll read with me, says, Upon entry of the confirmation order -- pardon me -- all enjoined parties are and shall be permanently enjoined on and after the effective date from taking any actions to interfere with the implementation or consummation of the plan.

Do you see that, sir?

A I do, yes.

Q What does interfering with the implementation or consummation of the plan mean?

A It means in some way taking actions to upset, distract, stop, or otherwise prohibit or hurt the estate from implementing or consummating the plan.

Q Okay. And is that intended -- is that clause we just read and you described intended to be very broad?

A I -- I think it's -- if the words have meaning, yes, that

it should -- it's pretty broad.
Q Okay. Is the Debtor not able to state with more specificity what it would believe interference with the implementation or consummation of the plan would mean?
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained.
THE WITNESS: I think it's -- I think it's --
THE COURT: Sustained.
MR. RUKAVINA: Okay.
THE WITNESS: I'm sorry.
BY MR. RUKAVINA:
Q Well, you just gave us four or five examples of what interfering with the implementation or consummation of the plan might be. Why isn't that, those four or five examples, why aren't they listed here?
MR. MORRIS: Object to the form of the question.
MR. RUKAVINA: Well, Your Honor, I'll withdraw it and I'll argue this at closing argument.
THE COURT: Okay.
BY MR. RUKAVINA:
Q When did the Committee agree to you serving as the Claimant Trustee?
A In the late -- in the late fall. I've been contemplated to be the Claimant Trustee. I'm willing to take -- if we can come to an agreement. They have their options open if we

can't come to an agreement on compensation.
Q Okay. And since the Committee agreed to you being the Claimant Trustee, you have reached a resolution with UBS, correct?
A I don't think so. I think that that was before UBS, the UBS resolution was reached.
Q I'm sorry. When did you reach the UBS resolution in principle with UBS?
A I don't recall the exact date, but I do recall specific conversations where some of the Committee members were supportive. I didn't know that UBS wasn't, but I assumed that some meant not all. And that was UBS, because I don't think we had a deal yet.
Q Well, let me ask the question in a little bit of a different way. Whenever the Debtor reached the agreement in principle with UBS that your counsel described this morning, whenever that point in time was, the Committee had already agreed before that point in time to you serving as Claimant Trustee, correct?
A I believe so, yes.
Q And is the answer the same with respect to the HarbourVest settlement?
A I believe so. With HarbourVest, I believe so as well, yes.
Q What about the Acis settlement?

A I don't believe so. I think Acis came first. I don't think we settled on an agreement on Claimant Trustee until after the Acis -- certainly after the Acis agreement, maybe not after the Acis 9019. I just don't recall.

Q Okay. And the million-dollar cutoff for convenience class creditors, that number was a negotiated amount with the Committee, correct?

A Yes.

Q Okay. Thank you, Mr. Seery.

MR. RUKAVINA: Your Honor, I'll pass the witness.

THE COURT: All right. Just for purposes of time, it's 3:00 o'clock, so you went 48 minutes.

Who's next?

MR. DRAPER: Mr. Taylor is.

THE COURT: All right. Mr. Taylor, go ahead.

MR. TAYLOR: Yes, Your Honor. At this time, what we would like the Court to do, we are asking for a brief continuance and to go into tomorrow, and there is a reason for that and I would like to explain it.

Mr. Dondero has communicated an offer which we believe to be a higher and better offer than what the plan analysis, even in its most recent iteration that was just changed last night, will yield significantly higher recoveries. Those are guaranteed recoveries. There is a cash component to that offer. There are some debt components, but they would be

secured by substantially all of the assets of Highland.

We believe it's a higher and better offer, that the creditors and the Creditors' Committee, Mr. Seery, who obviously has been testifying all day on the stand, may have heard some -- some inkling of it via a text or an email he might have been able to glance at, or maybe not, because he's been too busy, and that's understandable.

But we do believe it is a material offer. It is a real offer. And for that reason, we would like to request the Court's indulgence. This has gone rather fast. We believe that in the event that it does not gain any traction, then we could complete this confirmation hearing tomorrow, or it's more than likely that we could. And therefore we would request a continuance until tomorrow morning beginning at 9:30 so all the parties can confer, consider that offer, and see if it gains any traction.

THE COURT: All right.

MR. POMERANTZ: Your -- Your --

THE COURT: Go ahead. Mr. Morris? Or who is going to respond --

MR. POMERANTZ: Your --

THE COURT: -- to that?

MR. POMERANTZ: Your Honor, this is Jeff --

THE COURT: Mr. Pomerantz?

MR. POMERANTZ: This is Jeff Pomerantz. I will

respond.

I think right at the beginning of the hearing, or slightly after, I did receive an email from Michael Lynn extending this offer. The email was also addressed to Mr. Clemente. As we have told Your Honor before, if the Committee is interested in continuing negotiations with Mr. Dondero, far be it from us to stand in the way.

So what I would really ask is for Mr. Clemente to respond to think if -- to see if he thinks that this offer is worthy. If it's worthy and the Committee wants to consider it, we would by all means support a continuance. If it is not, I think this is just a last-minute delay without a reason. And if there is no likelihood of that being acceptable or the Committee wanting to engage, we would want to continue on.

THE COURT: All right. Mr. Clemente, what say you?

MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente on behalf of the Committee.

Obviously, I haven't had a chance to confer with my Committee members, but there's no reason to not continue the confirmation hearing today. I will be able to confer with them over email, et cetera, this evening. There's simply no reason to not continue going forward at this particular point in time, Your Honor.

So, although I haven't conferred with the Committee members, that would be what I would recommend to them. And so

my view, the Committee's view, I believe, would be let's continue forward and we'll discuss Mr. Dondero's proposal that I know came across after opening statements this morning, you know, in due course. But I do not believe that a continuance here is necessary or appropriate.

THE COURT: All right. Mr. Taylor, that request is denied, so you may cross-examine.

MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor. I have a couple people that are in my ear. But yes, I'm ready to proceed.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Seery, I believe you can probably largely testify from your memory of the various iterations of the plan analysis versus the liquidation analysis. But to the extent that you're unable to, we can certainly pull those up.

Mr. Seery, you put forth or Highland put forth on November 24th of 2020 a plan analysis versus a liquidation analysis, correct?

A I think that's the approximate date, yes.

Q Okay. And do you recall what the plan analysis predicted the recovery to general unsecured creditors in Class 8 would be at that time?

A I believe it was in the 80s.

Q And approximately 87.44 percent?
A That sounds close, yes.
Q Okay. And then just right before -- the evening before your deposition that took place on January 29th, I believe a revised plan analysis versus a liquidation analysis was provided. Do you remember that?
A Yes.
Q Okay. And what was the predicted recovery to general unsecured creditors under that analysis?
A I believe that was --
MR. MORRIS: Object to the form of the question. I just want to make sure that we're talking about the -- and maybe I misunderstood the question -- plan versus liquidation.
THE COURT: Okay. Could you restate --
MR. TAYLOR: I said plan analysis.
THE COURT: Plan.
THE WITNESS: I believe that that initially was in the -- in the high 60s.
BY MR. TAYLOR:
Q It was --
A Might have been --
Q -- 62.14 percent; is that correct?
A Okay. Yeah. That sounds -- I'll take your representation. That's fine.
Q Okay. And going back to the November 28th liquidation

analysis, what did Highland believe that creditors in Class 8 would get under a liquidation analysis?

A I don't recall the -- if you just tell me, I'll -- I'll -- if you're reading it, I'll agree with -- because I -- from my memory.

Q 62.6 percent? Is that correct?

A That sounds about right.

Q You would agree with me, would you not, that 62.6 cents on the dollar is higher than 62.14 cents, correct?

A Yes.

Q And so at least comparing the January 28th versus -- of 2021 versus the November 24th of 2020, the liquidation analysis actually ended up being higher than the plan analysis, correct?

A Yes.

Q But there was -- there was some changes also in the plan analysis. I'm sorry. There were some subsequent changes that were done over the weekend that were provided on February 1st. Is that correct?

A Yes.

Q Okay. And what were -- give us an overview of what those changes were.

A What are -- what are you comparing? What would you like me to compare?

Q Okay. The January to February plan analysis, what were

the changes? Why did it go up from 62.6 to 71.3?
A The main changes, as we discussed earlier, and maybe the only major change, was the UBS claim amount, which went down significantly from the earlier iteration. And then there was the small change related to the RCP recovery, which was a double-count.
Q Okay. And you talked about earlier about what assumptions went into these analyses, correct?
A Yes.
Q And you said these assumptions were always done after careful consideration. Is that a correct summation of what you said?
A I think that's fair.
Q Okay.
MR. TAYLOR: Mr. Assink, could you pull up the November assumptions?
BY MR. TAYLOR:
Q I believe that's coming up, Mr. Seery. The Court.
(Pause.)
MR. TAYLOR: And go down one page, please, Mr. Assink. Roll up. The Assumption L.
BY MR. TAYLOR:
Q So, these are the November assumptions, correct, Mr. Seery?
A I believe so, yes.

Q Okay. And what was the assumption that you made after careful consideration regarding the claims for UBS and HarbourVest?
A The plan assumes zero, that was L, for those claims.
Q Okay. And ultimately what did -- and I believe you just announced this today and made this public today -- what is UBS's claim? What are you proposing that it be allowed at?
A $50 million in Class 8, and then they have a junior claim as well.
Q Okay. And what about HarbourVest? What kind of allowed claim did they end up with?
A $45 million in Class 8 and a $35 million junior claim.
Q So your well-reasoned assumption, carefully considered, was off by $95 million; is that correct?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
THE WITNESS: The difference between zero and those numbers is $95 million, yes.
BY MR. TAYLOR:
Q You solicited creditors of the Highland estate based upon the November plan analysis and liquidation analysis that was provided and that we're looking at right now, correct?
A It was one of the bases, yes. It's the plan is what -- what we solicited votes for, not the projections.
Q But this was included within the disclosure statement; is

that correct?
A It's one of the bases. It was included, yes.
Q And this is the bases by which you believe that the best interests of the creditors have been met better than a Chapter 7 liquidation, correct?
A I believe this evidences that the best interest test would be satisfied, yes.
Q And so the record is very clear, for this Court and anybody looking at the record, no solicitation was done of the creditor body after the disclosure statement was sent out? No updates were sent, correct?
A Updated projections were filed, but no solicitation was -- was -- there was only one solicitation. We did not resolicit. That's correct.
Q Okay. Mr. Seery, how much are you -- after this plan, or if this plan is confirmed, how much are you going to be paid per month to be the Trustee?
A For the Trustee role, $150,000 per month is the base.
Q It's a base amount? On top of that, you're going to receive some sort of bonus amount, correct?
A There's two bonuses. There's a bonus for the bankruptcy case, which I'd need Court approval for, and then I'm going to seek a bonus for the Trustee work, which would be a combination of myself and the team for a performance bonus. That's to be negotiated.

To be fair, the Committee or the Oversight Group may not agree to any change, in which case we would not have an agreement.

Q And what would happen if you don't come to an agreement, Mr. Seery?

A They would have to get a different Plan Trustee.

Q Okay. So it's certainly going to have to be greater than zero, correct?

A Typically.

Q Is it going to be in the nature of three or four percent of the sales proceeds, or have you considered that?

A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been thinking -- my apologies. I misunderstood. I thought you meant any number. I haven't -- I haven't had negotiation with them. I'm thinking about looking at the full recovery of the team -- for the team, looking at expected performance numbers, and then trying to negotiate a structure of bonus compensation that would be payable to the whole team, and then allocated by the CEO (garbled) which would be made.

Q When predicting the expenses of the Trust going forward in your projections, did you build in an amount for a bonus fee?

A No. It wouldn't be part of the expenses. It would come out at the end.

Q Okay. So those additional expenses are not shown in the plan analysis, correct?

A No, they're not. It's just not going to be an expense. It'll be a -- as an operating expense. It'll be an expenditure at the end out of distributions.
Q Okay. And did you subtract those from the distributions?
A No.
Q Okay. A Chapter 7 trustee is not going to charge $150,000 or more to monetize these assets, is he?
A No.
Q Have you priced how much D&O insurance is going to be on a go-forward basis post-confirmation?
A I'm sorry. I couldn't -- couldn't hear you.
Q Sorry. Let me get closer to my mic. Have you priced what D&O insurance is going to run the Trust on a go-forward basis post-confirmation?
A Yes.
Q Okay. And what are you projecting that to run?
A About $3-1/2 million.
Q And is that per annum for over the two-year life of this plan?
A Well, it's the two-year projection period, not life. But I expect that that's for the two-year projection period.
Q Okay. So approximately one point -- I'm sorry, you said $3.5 million, correct?
A Yes.
Q Okay. So, $1.75 million per year?

A Yes.
Q On top of the minimum $1.8 million per year that you're going to be paid, correct?
A Well, that's -- that's the base compensation. But, again, to be fair to the Oversight Committee, they haven't approved it yet. So the Committee, the Committee reserves their rights to negotiate a total package.
Q And there's going to be a Litigation Trustee, correct?
A Yes.
Q And that Litigation Trustee is going to be paid some amount of compensation, correct?
A Yes.
Q That has not been negotiated yet, correct?
A No, I believe -- I believe the base piece has. But his -- I don't know what the contingency fee or if that's been negotiated yet. I don't know.
Q And what is the base fee for the Litigation Trustee?
A My recollection is it was about $250,000 a year, some number in that area.
Q Thank you. So, at this point, over the two-year period, we're looking at approximately $3.6 million to you, $3.5 million to the D&O insurance, and approximately $500,000 base fee to the Litigation Trustee, plus a contingency. Is that correct?
A That's probably real close, yes.

Q Okay. And how about U.S. Trustee fees? You've estimated of how much those are going to be during the two-year period, correct?
A They're built into the plan up 'til -- I think it's only up until the actual effective date, but I don't recall the specifics.
Q Okay. And U.S. Trustee fees, the case is going to stay open and those are going to continue to have to be paid, even after confirmation, correct?
A Yes.
Q Okay. And do you have an estimate of how much those are going to run per annum or over that two-year period?
A I don't recall, no.
Q Okay. Well, they're provided within your projections, correct?
A Yes.
Q Okay. A Chapter 7 trustee would not have to incur any of these costs, would they?
A I don't think they'll have to incur Chapter -- U.S. Trustee fees. I don't know whether they would bring on a litigation trustee or not. I would assume, since there's -- appear to be valuable claims, they probably would, but perhaps they would do it themselves. So I don't know the specifics of what they would do.
Q In preparing your liquidation analysis, did you ask

Pachulski if they would be willing to work for a Chapter 7 trustee if one was appointed?

A I didn't specifically ask, no.

Q Did you ask DIS, your, for lack of a better word, financial advisors in this case, if they would be willing to work with a Chapter 7 trustee?

A DSI. No, I did not specifically ask them.

Q Okay. All right. Any of the accountants that you're working with, did you ask them if they would be willing to work with a Chapter 7 trustee?

A I didn't specifically ask them, no.

Q Okay. The proposed plan has no requirements that you notice any potential sale of either Highland assets or Highland subsidiary assets; is that correct?

A Do you mean after the effective date?

Q Yes.

A No, it does not.

Q In the SSP sale, which is a subsidiary of Trussway, which is a subsidiary of Highland, or actually it's a sub of a sub of Highland, you conducted the sale of SSP, correct?

A The team did, yes. I was part.

Q All right. That was not noticed to the creditor body; is that correct?

A That's correct.

Q And it is the Debtor's and your position that no notice

was required because this was a sub of a sub and therefore this was in the ordinary course?
A Not exactly, no.
Q Okay. Then what is your position?
A It was in the ordinary course. It was -- I believe it's a sub of a sub of a sub, and a significant portion of the interests are owned by third parties.
Q It is possible, is it not, that had you noticed this to the larger creditor body, that you might have engendered a competitive bidding situation that might have reached a higher return for investors, correct?
A The same possibility is it could have gone lower.
Q But it is possible, correct?
A Certainly possible.
Q In fact, there is normally requirements under the Bankruptcy Code and the Rules that asset sales are noticed out to the creditor body, correct?
A Asset sales that -- property of the estate, yes. Other than in the ordinary course, of course.
Q I believe you have described Mr. Dondero as being very litigious within this case; is that correct?
A I believe so, yes.
Q Okay. Did Mr. Dondero initiate any litigation in this case prior to September 2020?
A Prior to September? I don't believe so. I don't know

when he filed the claim from NexPoint. It certainly indicated that -- I believe it was from NexPoint. My memory is slightly off here. He filed a claim in -- administrative claim, which effectively is like you're bringing a complaint, against HCMLP for the management of Multi-Strat and the sale of the life settlement policies out of Multi-Strat, which was conducted in the spring.

Q And wasn't Mr. Dondero seeking document production related to that sale?

A No.

Q Okay. I believe that the preliminary injunction that you talked about and were questioned earlier, the plan asks to enjoin (garbled) party from allowing the plan to go effective. Is that correct?

A I'm sorry. I didn't understand you question. There was a -- there was a bunch of interference.

Q Okay. Sure. I'm sorry about that. I don't know if that's -- I don't think that's me, but --

A It may not be. It sounded like someone else.

Q The injunction prohibits anybody from interfering with the plan going effective, correct?

A The plan injunction?

Q Yes.

A Yes.

Q Okay. Just so I'm clear, is the plan injunction

attempting to strip appellate rights of Mr. Dondero?
A No.
Q Okay. So, if, for instance, if he were to file any appeal of an order confirming this plan, he wouldn't be in violation of that plan injunction?
A I don't think so, because the order wouldn't be final.
Q Okay. But it -- it says upon entry of a confirmation order, you're enjoined from doing so. So that's not the intent?
A It certainly would not be my intent. I don't think that anybody had that in mind.
Q Okay. And if Mr. Dondero were to seek a stay pending appeal either during that 14-day period or afterwards, is that plan injunction attempting to stop that -- that sort of action?
A I apologize. You're breaking up. But I think I understood your question. No, it was -- it was your screen as well. No. If either this Court stays its own order or a higher court says that the order is stayed, then there would be no way there could be any allegation that it's interfering with an order if it's not effective.
Q Mr. Dondero opposed the Acis sale, correct?
A The Acis settlement?
Q Correct.
A Yes.

Q After he opposed the Acis settlement, the next filing Mr. Dondero made was requesting that the Debtor notice the sale of any assets or any major subsidiary assets. Is that correct?
A I don't recall the sequence of his filings. I think that Judge Lynn at least sent a letter to that effect. I don't recall if there is a filing to that effect.
Q Did Mr. Dondero, through his counsel, attempt to resolve that motion without filing anything further?
A I don't recall the specifics of the motion. I know they asked for some sort of relief that -- that we thought was inappropriate.
Q When the Court postponed any hearing on Mr. Dondero's request for relief until the eve of the confirmation hearing, and Mr. Pomerantz announced that no sales were expected before confirmation, did Mr. Dondero withdraw his motion?
A Again, I don't recall the specifics of the motion. I only recall the letter from Judge Lynn.
Q Did Mr. Dondero do anything more than object to the HarbourVest deal?
A Not that I know of.
Q Did Mr. Dondero do anything more than respond to the Defendants' injunction suit?
MR. MORRIS: Objection to the form of the question. I mean, -- objection to the form.
THE COURT: Overruled.

MR. TAYLOR: I apologize. I should have said the Debtor's injunction suit.

THE WITNESS: Yeah, the -- I'm not sure of the specific order, but certainly the communications with me, which I think are prior to the order. The communications with Mr. Surgent, which I believe are after the order. Certain communications with Mr. Waterhouse, which were oral. Those were all similarly difficult and obstreperous actions.

BY MR. TAYLOR:

Q Has Mr. Dondero commenced any adversary proceeding or litigation in this case other than filing a competing plan?

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

THE COURT: Over --

THE WITNESS: Yeah, I don't --

THE COURT: -- ruled.

THE WITNESS: I don't believe he's commenced an adversary. I'm sorry, Judge. I don't believe he's commenced an adversary proceeding, no.

BY MR. TAYLOR:

Q Mr. Dondero didn't file any opposition to the life settlement sale, did he?

A We didn't do the life settlement (garbled) Court.

Q Right. Again, that wasn't noticed through the -- this Court, was it?

A It was an -- the reason was it was an asset of Multi-Strat

Fund. It wasn't an asset of the Debtor's.
Q Okay. Mr. Dondero did have concerns regarding the life settlement sale, correct?
A Yes.
Q In fact, he believed that they were being sold for substantially less than what could have otherwise been received, correct?
A He may have.
Q And if you conduct any subsequent sales for less than market value that might ultimately prevent the waterfall from ever reaching Mr. Dondero, he would have no recourse under this proposed plan to object to this sale or otherwise have any comment on it. Is that correct?
A I clearly object to the thinking that that was less than market value. It was -- it was more than market value. So I don't -- I disagree with the premise of your question.
Q So, I don't believe that was the question that was asked. The question that was asked is, as you move forward with your -- what I will characterize as a wind-down plan, not putting that word in your mouth -- but as you execute forward on your plan, as these sales of these assets go through, no notice is going to be provided, correct?
A Not necessarily. It depends on the asset and what we think of the, you know, the -- the position of the parties at the time.

If we have a -- if we have a transaction that's pending that wouldn't be hurt by a notice and that we'd be able to get the Court's imprimatur to maybe more better insulate, if you will, against Mr. Dondero's attacks, then we may well come to the Court to seek that.

The problem with noticing sales is that -- that it often depresses value. That's just not the way folks outside of the bankruptcy world (audio gap) sales.

Q So there's no requirement that either public or private notice be provided, correct?

A No. Meaning it is correct.

Q Okay. And if Mr. Dondero had objections either to the pricing of the sale or the manner and means by which the sale was being conducted, he would be prohibited by the plan injunction from bringing any objection to such sale, correct?

A I believe so, yes.

Q Mr. Dondero also had concerns regarding the OmniMax sale, correct?

A Mr. Dondero did not go along with the OmniMax sale with the assets that he managed. I don't know if he had concerns with -- with our sale or OmniMax's interests.

Q Did Mr. Dondero ever express to you any concern that the value wasn't being maximized regarding the sale of those assets?

A He thought he could get more. I don't know that he

thought that he could get more for his assets that he was managing or whether he thought he could get more for all of the assets.

Q Other than voicing those concerns, did Mr. Dondero file any pleading with this Court attempting to block that sale?

A Pleading with the Court? No.

MR. TAYLOR: Your Honor, I would like to confer with my colleagues just very briefly and see if they have anything further. And even if they don't, Mr. Lynn of my firm would like a very brief moment to address the Court prior to me passing the witness.

So, if I may have a literally hopefully one-minute break where I can turn my camera off and my microphone off to confer with my colleagues, and then move forward?

THE COURT: Okay. Well, you can have a one-minute break, but we're going to continue on with cross-examination at this point. Okay? I'm not sure what you meant by Mr. Lynn wants to raise an issue at this point. Could you elaborate?

MR. TAYLOR: I will get some elaboration during our 30-second to one-minute break, Your Honor. I was just passed a note.

THE COURT: All right. So, but I'll just you know, --

A VOICE: Your Honor?

THE COURT: -- I'm inclined to continue with the

cross-examination. You know, this isn't a time for, you know, arguments or anything like that. All right?

So, we'll take a one-minute break. You can turn off your audio and video for one minute, and come back.

(Off the record, 3:33 p.m. to 3:34 p.m.)

THE WITNESS: Your Honor?

THE COURT: Yes?

THE WITNESS: It's Jim Seery. Can I turn it into just a two-minute break, since I've sat in my seat, and it would be better for him to just continue straight through. I could use one or two minutes.

THE COURT: Okay.

THE WITNESS: I apologize.

THE COURT: All right. Well, it's been more than minute. Let's just say a five-minute break for everyone, and we'll come back at 3:39 Central time. Okay.

THE WITNESS: Okay. Thank you, Your Honor. I appreciate that.

(A recess ensued from 3:35 p.m. until 3:40 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We are back on the record. Mr. Taylor, are you there?

MR. TAYLOR: I am, Your Honor. My video is not wanting to start, but my -- I believe my audio is on.

THE COURT: Okay. After you went offline for your

one-minute break, Mr. Seery asked for a five-minute bathroom break, or a couple-minute. Anyway, we've been gone on a bathroom break. We're back now.

MR. TAYLOR: Thank you. I was actually -- I was still listening with one ear, --

THE COURT: Okay.

MR. TAYLOR: -- Your Honor, so I understand.

THE COURT: All right.

MR. TAYLOR: So, thank you.

THE COURT: Are you finished with cross, or no?

MR. TAYLOR: Just a little bit of a follow-up.

CROSS-EXAMINATION, RESUMED

BY MR. TAYLOR:

Q Mr. Seery, you had previously testified that Mr. Dondero's counsel had threatened you and/or the independent board, I was not exactly sure who you were referring to, with suits, and I believe you said a hundred million dollars' worth of suits and getting dragged into litigation.

Is that still your testimony today, that you were -- you were threatened with suit by this firm of a suit of over a hundred million dollars?

A I believe what I was told by my counsel was that, not Mr. Dondero's, but one of the other counsel, who I can name, said specifically that Dondero will sue Seery for hundreds of millions of dollars. We're going to take it up to the Fifth

Circuit, get it reversed, and he'll go after him.
Q Okay. So it was not Mr. Dondero's counsel, and you were not -- is that correct?
A No. It was one of the other counsel on the phone today.
Q Okay. And you base that not upon your own personal knowledge but based on some -- something else that you were told, correct?
A Yes. By my counsel.
Q Thank you.
MR. TAYLOR: Yes, Your Honor. We can pass the witness.
THE COURT: Okay. So, you've gone, or you and Mr. Rukavina collectively have gone one hour and 17 minutes. Mr. Draper, you're next.
MR. DRAPER: Yes, Your Honor. Thank you. I basically have no more than ten questions, so I gather the Court will welcome that.
THE COURT: Okay.

CROSS-EXAMINATION

BY MR. DRAPER:
Q Mr. Seery, has the new general partner been formed yet?
A I don't know if they've been -- we've actually done the formation, but it -- it would be in process.
Q So it either has been formed or has not been formed?
A I don't -- I don't know the answer.

Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will have nothing to do with the Reorganized Debtor, correct?
A Not necessarily, but they don't have a specific role at this time.
Q They won't be officers or directors of the new general partner or the Reorganized Debtor, correct?
A I don't -- I don't believe so, but it's not set in stone.
Q All right. Has any finance -- has any party who is the beneficiary of an exculpation, a release, or the channeling injunction contributed anything to this plan of reorganization in terms of money?
A No.
Q Have you ever interviewed a trustee as to how they would liquidate the assets or monetize the assets in this case?
A No.
Q And last question is, is there any bankruptcy prohibition that you're aware of that a Chapter 7 trustee could not do what you're doing?
A Which -- which -- what do you mean, under the plan?
Q No. Could not monetize the assets of the estate in the manner that you're attempting to monetize them.
A I don't think there's a specific rule, but I just haven't -- I haven't seen that before, no. So I don't think there's a specific rule that I know of.
Q Okay.

MR. DRAPER: I have nothing further for this witness.

THE COURT: All right. I should have asked, we had a couple of other objectors. Ms. Drawhorn, did you have any questions?

MS. DRAWHORN: I have no questions, Your Honor.

THE COURT: All right. Were there any other objectors out there that I missed that might have questions? All right. Any redirect?

MR. MORRIS: Your Honor, if I may, can I -- can I just take a short minute to confer with my colleagues?

THE COURT: Sure. You can --

MR. MORRIS: Thank you.

THE COURT: -- put you --

MR. MORRIS: Two -- two minutes, Your Honor.

THE COURT: Okay.

(Pause, 3:45 p.m. until 3:48 p.m.)

THE COURT: All right. We've been a couple of minutes. Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: What are --

MR. MORRIS: Just, just a few points, Your Honor.

THE COURT: Okay.

MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

THE WITNESS: I am, yes.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You were asked a number of questions about your compensation. Do you recall all that?

A Yes, I do.

Q And you testified to the $150,000 a month. Do you recall that?

A Yes.

Q Under the -- under the documentation right now, your compensation is still subject to negotiation with the Committee; is that right?

A Yes, it is.

Q Okay. You were asked a couple of questions about the conduct of Mr. Dondero. Earlier, you testified that the monetization plan was filed under seal at around the time of the mediation. Do I have that right?

A Yes. Right at the start of the mediation.

Q Okay. And is that the first time that the Debtor made the constituents aware, including Mr. Dondero, that it intended to use that as a catalyst towards getting to a plan?

A That's the first time that we filed it, but that plan had been discussed prior to that.

Q And do you recall that there came a point in time where you -- when the Debtor gave notice that it intended to terminate the shared services agreements with the Dondero-related entities?

A Yes.
Q And when did that happen?
A That was about 60 -- now it's like 62 days ago.
Q Uh-huh. And you know, from your perspective, from the filing of the monetization plan in August through the notice of shared services, is that what you believe has contributed to the resistance by Mr. Dondero to the Debtor's pursuit of this plan?
A Well, I think there's a number of factors that contributed, but the evidence that I've seen is that when we started talking about a transition, if there wasn't going to be a deal, if Mr. Dondero couldn't reach a deal with the creditors, we were going to push forward with the monetization plan. And the monetization plan required the transition of the employees. And indeed, it called specifically, and we had testimony regarding it all through the case, about the employees being terminated or transferred.

In order to transfer them over to an entity that's related, Mr. Dondero pulls all of those strings. And he refused to engage on that. We started in the fall. We specifically told employees of the Debtor not to engage. They couldn't spend his money, which made sense --

MR. TAYLOR: Objection, Your Honor.

THE WITNESS: So, very -- that --

THE COURT: Just -- there's an objection.

MR. MORRIS: There's an objection.

THE WITNESS: I'm sorry.

THE COURT: There was an objection.

MR. TAYLOR: Yes, Your Honor. Object --

THE COURT: Go ahead.

MR. TAYLOR: Yes, Your Honor. This is Clay, Clay Taylor. Objection. He's directly said Mr. Dondero told other employees *x*, and that is purely hearsay, not based upon his personal opinion, or his personal knowledge, and therefore that part of the answer should be struck.

MR. MORRIS: Your Honor, it's a statement against interest.

THE COURT: Overrule the objection. Go ahead.

THE WITNESS: Yeah. The difficulty of transitioning this business, I've equated it to doing a corporate carve-out transaction on an M&A side. It's hard, and you need counterparties on the other side willing to engage. And what we went through over the weekend, on Friday, was seemingly that the Funds, you know, directed by Mr. Dondero, just haven't engaged.

We actually gave them an extra two weeks to engage, because it's -- they've really been unable to do anything. I mean, hopefully, we've got the employees working in a way that can -- that can foster and get around some of this obstreperousness, and I've used that word before, but that's

what it is. It's really an attempt to just prevent the plan from going forward.

And at some point, the plan will go forward. And if we are unable to transition people, we will simply have to terminate them. And that is not a good outcome for those employees, but it's not a good outcome for the Funds, either. And the Funds, Mr. Dondero, the Advisors, the boards, nobody wants to do anything except come in this court.

BY MR. MORRIS:

Q Do you recall being asked about Mr. Dondero and certain things that he didn't do and certain actions that he hadn't taken?

A Yes.

Q By Mr. Taylor? To the best of your recollection, did Mr. Dondero personally object to the HarbourVest settlement?

A I -- I don't recall if he did or if it was one of the entities.

Q It was Dugaboy. Does that refresh your recollection?

A Dugaboy certainly objected, yes.

Q And do you understand that Dugaboy has appealed the granting of the 9019 order in the HarbourVest settlement?

A Yes.

Q And Mr. Taylor asked you to confirm that Mr. Dondero hadn't taken any action with respect to the life settlement deal. Do you remember that?

A I do.
Q But are you aware that Dugaboy actually filed an administrative claim relating to the alleged mismanagement of the life settlement sale?
A Yes, I did, I did allude to that. I wasn't sure it was Dugaboy, but -- but that was very --
Q Uh-huh.
A -- very early on, an objection filed in the form of an administrative claim or complaint against, if you will, against Highland for the management of Multi-Strat.
Q Uh-huh. And Mr. Dondero didn't personally file any motion seeking to inhibit the Debtor from managing the CLO assets; is that right?
A No, not the CLO assets, no.
Q Yeah. But the Funds and the Advisors did. That was the hearing on December 16th. Do you recall that?
A Yeah. That was the -- the Funds. K&L Gates, the Funds, and the various Advisors.
Q All right. Do you recall Mr. Rukavina asking you whether there was any evidence in the record to support your testimony that there was an agreement in place to assume the CLO management agreements?
A I recall the question, yes.
Q Okay.
MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

to put up on the screen the Debtor's omnibus reply to the plan objections.

THE COURT: Okay.

MR. MORRIS: It was filed -- it was filed on January 22nd. And if we can go, I think, to -- I think it's Paragraph -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

BY MR. MORRIS:

Q Take a look at that, Mr. Seery. Does that -- does that statement in Paragraph 135 accurately reflect the understanding that's been reached between the Debtor and the CLO Issuers with respect to the Debtor's assumption of the CLO management agreements?

A Yes. I think that's consistent with what I testified to earlier, the substance of the agreement.

MR. MORRIS: And if we can just scroll to the top, just to see the date. Or the bottom. I guess the top.

THE WITNESS: Do you mean the date of this pleading?

BY MR. MORRIS:

Q Yeah. So, it was filed on January 22nd, right, ten days ago? Okay.

A That's correct.

MR. MORRIS: I'd like to put up on the screen an email, Your Honor, that I'd like to mark as Debtor's Exhibit 10A. And this is --

BY MR. MORRIS:

Q Do you recall, Mr. Seery, you testified that the agreement was reflected in an email?
A Yes.
Q Is this the email that you're referring to?
MR. MORRIS: If we could scroll down. Right there.
THE WITNESS: Yes.
MR. MORRIS: Okay. One -- the email below. Okay. Right there.
BY MR. MORRIS:
Q Is that the -- is that the email you had in mind?
A It was the series of emails. We -- we had a -- I think I testified in the prior testimony, or my -- one of my depositions, that we had had a number of conversations with the Issuers and their counsel, and this was the summary of the agreement that was contained in these emails.
Q Okay. And this is, this is the same date as the omnibus reply that we just looked at, right, January 22nd?
A That's correct.
Q Okay. You were asked a question, I think, late in your cross-examination about a Chapter 7 trustee's ability to sell the assets in the same way as you are proposing to do. Do you recall that testimony?
A Yes.
Q And I think, if I understood correctly, the question was narrowly tailored to whether there was any legal impediment to

a trustee doing -- performing the same functions as you. Do I have that right?

A That's the question I was asked, whether the Bankruptcy Code had a specific prohibition.

Q Okay. And I think, I think you testified that you weren't aware of anything. Is that right?

A That's correct.

Q All right. But let's talk about practice. Do you think a Chapter 7 trustee will realize the same value as you and the team that you're assembling will, in terms of maximizing value and getting the maximum recovery for the assets?

A No. As I testified earlier, you know, I've been working with these assets now for a year. It's a complicated structure. The assets are all slightly different. And sometimes much more than slightly. And the team that we're going to have helping managing is familiar with the assets as well. We believe we'll be able to execute very well in the markets that we (garbled).

Q Do you think a Chapter 7 trustee will have a steep learning curve in trying to even begin to understand the nature of the assets and how to market and sell them?

A I think anybody coming into this, the way this company is set up, as an asset manager, and the diversity of the assets, would have a steep learning curve, yes.

Q Do you have any view as to whether the perception in the

marketplace of a Chapter 7 trustee taking over to sell the assets will have an impact on value as compared to a post-confirmation estate of the type that's being proposed under the plan?

A Yes, I do, and it certainly would be negative, in my experience. Typically, assets are not conducted -- asset sales are not conducted through a bankruptcy court, and certainly not with a Chapter 7 trustee that has to sell them, and generally is viewed as having to sell them quickly. So we -- we approach each asset differently, but certainly in a way that would be much more conducive to maximizing value than a Chapter 7 trustee could, just by the nature of their role.

Q Is it -- is it your understanding that, under the proposed plan and under the proposed corporate governance structure, that the Claims Oversight Committee will -- will manage you? That you'll report to that Committee and that they'll have the opportunity to make their assessment as to the quality of your work?

A Yeah, absolutely. And that's consistent with what we've done before in this case. Even where it wasn't an asset of the estate or was being sold in the ordinary course, we spent time with the Committee and the Committee professionals before selling assets.

Q And you've worked with the Committee for over -- for a year now, right?

A It's over a year.
Q And the Committee is comfortable with you taking this role; is that right?
A I think they're supportive of it. Comfortable might be not the right word choice.
Q Okay. I appreciate the clarification. And do you have any reason to believe that the -- that the Oversight Committee is going to allow you the unfettered discretion to do whatever you want with the assets of the Trust?
A Not a chance. Not with this group. Nor would I want to. There's no right or wrong answer for most of these things, and the collaborative views from professionals and people who have an economic stake in the outcome will be helpful.
Q Okay. You were asked some questions about the November projections and the -- and the assumption that was made that valued the HarbourVest and the UBS claims at zero. Do you recall that?
A Yes.
Q As of that time, was the Debtor still in active litigation with both of those claim holders?
A Very much so.
Q And after the disclosure statement was issued, do you recall that the Court entered its order on UBS's Rule 3018 motion?
A Yes.

Q And do you recall what the -- what the claims estimate was for voting purposes under that order?
A It was about $95 million. That was -- it was together with the summary judgment orders of that date. They were separate orders, but that was the lone hearing.
Q And was that public information, that order was publicly filed on the docket; isn't that right?
A Yes, it was.
Q Is there anything in the world that you can think of that would have prevented any claim holder from doing the math to try to figure out the impact on the estimated recoveries from the -- by using that 3018 claims estimate?
A No. It would have -- it would have been quite easy to do.
Q And, in fact, that's what you wound up doing with respect to the January projections, right?
A That's correct.
Q And do you recall when the HarbourVest settlement, when the 9019 motion was filed?
A I don't recall the actual filing. It was subsequent to the UBS, though.
MR. MORRIS: Ms. Canty, if you have it, can we just put it on the screen, to see if we can refresh Mr. Seery's recollection? If we could just look at the very top.
BY MR. MORRIS:
Q Does that refresh your recollection that the 9019 motion

was filed on December 23rd?
A Yes, it does. The agreement was reached before that, but it took a little bit of time to document the particulars and then to -- to get it filed.
Q And this wasn't filed under seal, to the best of your recollection, was it?
A No, no. This was -- this was open, and we had a very open hearing about it, because it was a related-party objection.
Q And to the best of your recollection, did this 9019 motion publicly disclose all of the material terms of the proposed settlement?
A Yes, it did.
Q Can you think of anything in the world that would have prevented any interested party from doing the math to figure out how this particular settlement would impact the claim recoveries set forth in the Debtor's disclosure statement?
A No. And just again, to be clear, the plan and the projections had assumptions, but the plan was very clear that the denominator was going to be determined by the total amount of allowed claims.
Q And, again, at the time that that was filed, you hadn't reached a settlement with HarbourVest, had you?
A No.
Q And the order on the 3018 motion hadn't yet been filed; is that right?

A That's correct.
Q Okay. Has -- are you aware of any creditor expressing any interest in trying to change their vote as a result of the updates of the forecasts?
A Only Mr. Daugherty. And actually, they have a stipulation with the two -- the two former employees.
Q All right. But to be fair, that wasn't -- had nothing to do with the revisions to the projections? That was just in connection with their settlement; is that right?
A That's correct. As was, I suspect, Mr. Daugherty's, but he'd been aware of the settlements, just like everyone else.
Q Okay. You were asked a couple of questions, I think, by Mr. Rukavina about whether there is anything that you need to do your job on a go-forward basis. And I think you said no. Do I -- do I have that right? Nothing further that you need?
A I -- I'm not really sure what your question means, to be honest.
Q Okay. Fair enough. To be clear, is there any chance that you would accept the position as the Claimant Trustee if the gatekeeper and injunction provisions of the proposed plan were extracted from those documents?
A No. As I said earlier, they're integral in my view to the entire plan, but they're absolutely essential to my bottom.
Q Okay. And through -- through the date of the effective date, are you relying on the exculpation clause of the -- have

you been relying on the exculpation clause in the January 9th order that you testified to at the beginning of this hearing?
A Yeah. Both the January 9th order as well as the July order with respect to my CEO/CRO positions.
Q Okay.
MR. MORRIS: I've got nothing further, Your Honor.
THE COURT: All right. Any recross on that redirect?
A VOICE: I believe Mr. Rukavina is speaking but is muted, Your Honor.
THE COURT: Mr. Rukavina, do you have any recross?
MR. RUKAVINA: Your Honor, I do, yes. Thank you. I apologize.
THE COURT: Okay.
MR. RUKAVINA: Can you hear me now?
THE COURT: Yes.
THE WITNESS: Yes.
MR. RUKAVINA: Thank you.
Mr. Vasek, if you'll please pull up the Debtor's Omnibus Reply, Docket 1807. And if you'll go to Exhibit C. Do a word search for Exhibit C. It's attached to it. Okay. Now scroll down. Stop there.

RECROSS-EXAMINATION

BY MR. RUKAVINA:
Q Mr. Seery, do you see what's attached as Exhibit C to the Omnibus Reply, which is proposed language in the confirmation

order?
A I see the exhibit. I didn't know if this was -- I don't know exactly what it's for. If it's proposed language, I'll accept your representation.
MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr. Vasek. I want to make sure that I understand what you're saying. Scroll back up. Do the word search for where Exhibit C appears first. Start again. Okay. So scroll up.
BY MR. RUKAVINA:
Q So, you'll recall Mr. Morris was asking you about the paragraph in here where you outlined the terms of the agreement with the CLOs. Do you recall that testimony?
A Yes.
Q Okay. And then you see it says, The Debtor and the CLOs agreed to seek approval of this compromise by adding language to the confirmation order. A copy of that language is attached hereto as Exhibit C and will be included in the confirmation order.
Do you see that, sir?
A I do.
Q Okay.
MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.
BY MR. RUKAVINA:
Q So it's correct that this Exhibit C is the referenced agreement that the Debtor and the CLOs will seek approval of,

correct?
A The -- the -- it may be word-splitting, but I believe it says that they've reached agreement and this is the language that will evidence that agreement or embody that agreement.
Q Okay.
MR. RUKAVINA: Scroll down, Ms. Vasek, to the next page, please.
BY MR. RUKAVINA:
Q Real quick, do the CLOs owe the Debtor any money for the management fees?
A I don't -- well, the answer is there are accrued fees that haven't been paid, but when they have cash they run through the waterfall and pay them.
Q And I believe you mentioned to me those accrued fees before. They're several million dollars, correct?
A It -- I don't know right off the top of my head. They can aggregate and then they get paid down in the quarter depending on the waterfall. And it's -- it's not a fair statement by either of us to say the CLOs, as if they're all the same. Each one is different.
Q I understand. But as of today, you agree that the CLOs collectively owe some amount of money to the Debtor in accrued and unpaid management fees?
A I believe that's the case.
Q Okay. And do you believe it's north of a million dollars?

A I don't recall.
Q Okay.
MR. RUKAVINA: Well, scroll down a couple of more lines, Mr. Vasek. Stay there.
BY MR. RUKAVINA:
Q Sir, if you'll read with me, isn't the Debtor releasing each Issuer, which is the CLOs, for and from any and all claims, debts, et cetera, by this provision?
A Claims. Not -- not fees, but claims. I don't believe there's any release of fees that the CLOs might owe and would run through the waterfall here.
Q Okay. For and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs, and expenses, including without limitation attorneys' fees and related costs, damages, injuries, suits, actions, and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed.
Are you saying that that does not release whatever fees have accrued and the CLOs owe?
A I don't believe it would. If it did, your client should be ecstatic. But I don't believe it does that.
Q And you don't believe that it releases the CLOs of any and all other obligations that they may have to the Debtor and the

estate?
A I -- again, I don't believe there are any, but I think it's a broad release of claims away from the actual fees that are generated by the Debtor. I don't believe there's an intention to release fees that have accrued.
Q Have you seen this language before I showed it to you right now?
A I believe I have, yes.
Q Okay. Take a minute. Can you point the Court to anywhere where present or future fees under the CLO agreements are excepted from the release?
A I could go through, I'll take your representation, but I don't believe that that's what it -- it's supposed to release fees. Again, if the fees are owed, they get paid, if there are assets there to pay them.
Q Okay. This release and this settlement was never noticed out as part of a 9019, was it?
A I don't believe so, no.
Q Okay. So, other than bringing it up here today, this is the first that the Court, at least, has heard of this, correct?
A Yeah, again, I don't --
MR. MORRIS: Objection to the form of the question.
THE WITNESS: Yeah. I just stated before that I don't think this is a -- that there claims.

THE COURT: Wait. Slow down. I think --

MR. SEERY: Oh, I'm sorry, Your Honor.

THE COURT: -- there was an objection. Go ahead, Mr. Morris.

MR. MORRIS: The notion that this is the first time the Court has heard of this is just factually incorrect. First of all, it's in the document from January 22nd. Second of all, Mr. Seery testified to it last week at the preliminary injunction hearing. I mean, --

THE COURT: I -- I --

MR. MORRIS: -- I don't know what the point of the inquiry is, but there's -- this is not new news.

THE COURT: Okay. I sustain the objection.

BY MR. RUKAVINA:

Q And Mr. Seery, can you point me to any document where counsel for the CLOs has signed this particular confirmation order or any other document agreeing to this language in the confirmation order?

A I don't think there's any document that's signed. I think we already went over that. I think the email is evidence their agreement to the general terms. I don't see any agreement with respect to this particular language.

Q Well, you have no personal information? You're going on what your lawyers told you that the CLOs agreed to, correct?

A That's correct.

Q Okay. You didn't personally --
A Excuse me. That's correct with respect to this language, not with respect to the agreement. I was on the phone when they agreed.
Q Okay. And they agreed orally, you're saying, to basically the assumption of the CLO management agreements?
A Correct.
Q Okay.
MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.
THE COURT: All right. Other recross?
MR. TAYLOR: Yes, Your Honor, I do.
THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. TAYLOR:
Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry, let me restart. I believe you testified earlier, in response to questions by Mr. Morris, that you didn't believe a Chapter 7 trustee would be very effective in monetizing these assets, correct?
A I think I said I didn't believe that the Chapter 7 trustee would be as effective at monetizing the assets as the Reorganized Debtor would be, and me in the role as Claimant Trustee.
Q And one of the reasons that you gave is you believe that

the Chapter 7 trustee had to liquidate assets so quickly that it could not be effective; is that correct?

A Typically, that's the case, yes.

Q You worked for the Lehman trustee, correct?

A That's incorrect.

Q Okay. Did you work on the Lehman case?

A Did I work in the case? No.

Q Okay. Did you -- how were you involved within -- within the Lehman case?

A It's a long history, but I was a relatively senior person, not senior level, not senior management level person at Lehman. I ran the loan businesses and I helped a number of other places and I -- in the organization. I helped construct the sale of Lehman to Barclays out of the broker-dealer and then helped consummate that sale.

Q Okay. I believe, in that case, it was a SIPC -- the trustee was a SIPC trustee, correct?

A With respect to the broker-dealer.

Q Okay. And you believe that a SIPC trustee is very -- has very similar rules with respect to asset sales; is that correct?

A There are some similarities, absolutely.

Q Okay. And so in that case, the trustee was in place for seven years, yet you believe -- you want this Court to believe that a Chapter 7 trustee has to liquidate assets in a very

short time frame, is that correct?

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

THE WITNESS: Yeah, in the Lehman case, --

THE COURT: Overruled.

THE WITNESS: I'm sorry, Judge.

THE COURT: Go ahead.

THE WITNESS: In the Lehman case, the SIPC trustee spent years litigating, not liquidating. The broker-dealer was sold in our structured deal to Barclays, and then the SIPC trustee liquidated the remainder of the estate, which was the broker-dealer, but most of it had been sold to Barclays. It was really a litigation case.

BY MR. TAYLOR:

Q But it did -- that trustee did sell off subsequent assets after the initial sale, correct?

A That trustee, I don't think, managed -- I don't know about that. The trustee didn't really manage any assets. Other than litigations.

Q You've also testified that you didn't believe or that you would not take on this role without the gatekeeper and injunction -- gatekeeper role and injunction being in place; is that correct?

A Yes.

Q And you're also familiar with the Barton Doctrine, correct?

A I'm not.
Q Okay. Do you believe that a Chapter 7 trustee could be sued by third parties without obtaining either relief from this Court -- let me just stop there. Do you believe that a Chapter 7 trustee could be sued without seeking leave of this Court?
A I think it would be difficult. I know that Chapter 7 trustees have qualified immunity, so I think, whether it would be leave of this Court or it's just that there's a very high bar to suing them, I'm not exactly sure. It's not something I've spent time on.
Q Okay. So a hypothetical Chapter 7 trustee would have no need of the gatekeeper role or injunction if this case were converted to one under Chapter 7, correct?
A That's probably true.
Q Thank you.
MR. TAYLOR: No further questions.
THE COURT: All right. Any other recross?
MR. DRAPER: Your Honor, I have nothing --
THE COURT: All right.
MR. DRAPER: -- further.
THE COURT: All right. I think we're done, but anyone I've missed?
All right. Mr. Seery, it's been a long day. You are excused from the virtual witness stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Mr. Morris, let's see if there's anything else we can accomplish today. It's 4:18 Central time. Who would be your next witness?

MR. MORRIS: My next witness would be John Dubel, Your Honor.

THE COURT: All right. Can you give us a time estimate for direct?

MR. MORRIS: I wouldn't expect Mr. Dubel to be more than 20 minutes or so, but I would offer the Court, if you think it would be helpful, counsel for the CLO Issuers is on the call, and I believe that they would be prepared to just confirm for Your Honor that there is an agreement in principle, just as Mr. Seery has testified to, and maybe you want to hear from her. I know she's not really a witness, but she might be able to make some representations to give the Court some comfort that everything Mr. Seery has said is true.

THE COURT: I think that would be useful. Is it Ms. Anderson or who is it?

MS. ANDERSON: That is -- it is, Your Honor. And you know, I appreciate the testimony given. I certainly do not want to testify, but thought it might be useful for the Court to hear from us.

Amy Anderson on behalf of the Issuers from Jones Walker. Schulte Roth also represents the Issuers. And I can represent

to the Court that the agreement as it's represented on Docket 1807, as more particularly described in Exhibit C, which Your Honor has seen, is the agreement reached between the Issuers and the Debtor.

There was some testimony about fees owed, accrued fees owed to the Debtor. I certainly cannot speak to the substance of each particular management agreement with each CLO. They are all distinct and unique and very lengthy documents. I will -- I can represent to the Court that any accrued fees that are owed were not intended to be included in the release. It is -- it is not meant to release fees owed to Highland under the particular management agreements.

Of course, if the Court has any questions or if I can provide anything further, I'm happy to. And I will be on the hearing today and tomorrow, but I thought it might be useful, given the topic of the testimony this afternoon.

THE COURT: All right. That was useful. Thank you, Ms. Anderson.

All right. Well, Mr. Morris, shall we go ahead and hear from Mr. Dubel today, perhaps finish up a second witness?

MR. MORRIS: Yeah. I think we have the time. I think Mr. Dubel is here. Are you here, Mr. Dubel?

MR. DUBEL: I am. Can you hear me, Your Honor?

THE COURT: I can hear you, but I cannot see you. Oh, now I can see you. Please raise your right hand.

JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

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

MR. MORRIS: Thank you very much, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Dubel, can you hear me?

A I can, Mr. Morris.

Q Okay. Do you have a position today with the Debtor, sir?

A I am a director of Strand Advisors, Inc., which is the general partner of the Debtor.

Q Okay. And can you --

MR. MORRIS: Your Honor, just as a reminder, I'm going to ask Mr. Dubel to describe his professional experience in some detail, to put into context his testimony, but his *C.V.* can be found at Exhibit 6Y as in yellow on Docket No. 1822.

THE COURT: All right.

BY MR. MORRIS:

Q Mr. Dubel, can you describe your professional background?

A Yes. I have approximately, almost, and I hate to say it because it's making me feel old, but I have almost 40 years of experience working in the restructuring industry.

I have served in many roles in that, both as an advisor, an investor in distressed debt, and also a member of

management teams, and as a director, both an independent director and a non-independent director.

My executive roles have included the -- both an executive director, chief executive officer, president, chief restructuring officer, chief financial officer. And I have been involved in some of the largest Chapter 11 cases over the last several decades, including cases like *WorldCom* and *SunEdison*.

Q Let's focus your attention for a moment just on the position of independent director. Have you served in that capacity before this case?

A I have.

Q Can you describe for the Court some of the cases in which you've served as an independent director?

A Sure. I've served as an independent director in several cases that were I'll call post-reorg cases. *Werner Company*, which was the largest climbing equipment manufacturer in the world, manufacturer of ladders, Werner Ladders. You'll see them on every pickup truck running around the countryside.

FXI Corporation, which is a -- one of the largest foam manufacturers. Everybody's probably slept or sat on one of their products.

Barneys New York, back in 2012, when they did an out-of-court restructuring. I had previously been involved with Barneys 15 years before that, and so I was called upon because

of my knowledge to be an independent director in that situation. Have had no relationship with Barneys since it emerged from Chapter 11 back in 1998.

I have been the independent director in *WMC Mortgage*, which was a mortgage company owned by General Electric.

And I am currently serving as an independent director in a company -- in two companies. One, *Alpha Media*, which is a large radio station chain that recently filed Chapter 11, I believe it was late Sunday night, and I am also an independent director in the *Purdue Pharma* bankruptcy, and have served prior to the bankruptcy and am the chair of the special independent committee of directors -- special committee of independent directors in that particular situation.

Q That sounds like a lot. In terms of other fiduciary capacities, I think your *C.V.* refers to Leslie Fay. Were you involved in that case, and if so, how?

A I was. That was -- for those people who may remember it, that goes back into the 1993 era. *Leslie Fay* was a large apparel manufacturer, and at the time was one of the largest companies that had gone through an extensive fraud. I say at the time because it was about a $180 million fraud, which pales by some of the ones that have followed it.

I was brought in as the executive vice president in charge of restructuring, chief financial officer, and was also added to the board of directors. Even though I wasn't independent,

I was added to the board of directors to have the fresh face on the board in that particular situation because of the fraud that had taken place.

Q And --

A *Sun* --

Q Go ahead.

A *SunEdison*, I was brought in as the CEO. Actually, initially, as the chief restructuring officer, with a mandate to replace the CEO, which took place shortly after I was brought on board and -- because of various issues surrounding investigations by the SEC, DOJ, and allegations by the creditors of fraud. And so I was brought in to run the company through its Chapter 11 process.

As I'd mentioned earlier, *WorldCom*, I was brought in at the beginning of the case as the fresh chief financial officer. And I think everybody is familiar with what happened in the *WorldCom* situation.

Q All right. Based on that experience, do you have a view as to whether the appointment of independent directors is unusual?

A It is not. More recently, it has -- it had been in the past. Usually, you know, they would try and take the existing directors and form a special committee of the existing directors. But I think the state of the art has become more where independent directors are brought in, mainly because the

cases have become a lot more complex in nature, and larger, and the transactions themselves are much more sophisticated. And so having somebody independent has been important for analyzing the various transactions. And also, quite often, it's just bringing a fresh, independent voice to the company on the board.

Q Do you have an understanding as to the purpose and the role of independent directors generally in restructuring and bankruptcy cases?

A Sure. As I kind of alluded to a little bit earlier, the -- probably the most critical thing is for restoring confidence in the company and in the management in terms of corporate governance, especially when there have been troubled situations, where -- whether it's been fraud or allegations made against the company and its prior management or when management has left under difficult situations.

Also, you know, independent thought process being brought to the board is very important for helping guide companies. It's quite often the existing management team or the existing board may get stuck in a rut, as you can say, you know, in terms of their thinking on how to manage it, and having somebody with restructuring experience who provides that independent voice is very important to the operations.

In addition, having someone who can look at conflicts that might arise between shareholders or shareholders and the board

members is important. As I mentioned earlier, the *WMC Mortgage* situation was one where I was brought on to -- as an independent member of the board to effectively negotiate an agreement or a settlement between WMC and its parent, General Electric. That entity was being -- WMC was being sued for billions of dollars, and there were issues as to whether or not General Electric should fund those obligations. And so that was a role that is quite often occurring in today's day and age.

In addition, evaluating transactions for companies is important, whereby either the shareholders who sit on the board or board members may be involved in those transactions, needing an independent voice to review it. And, you know, I have served in situations. Again, *Barneys New York* and *Alpha Media* is another example where, as an independent director, I am one of the parties responsible for evaluating those transactions and making recommendations to the entire board.

And then, again, you know, situations where it's just highly-contentious and having, as I said, having that independent view brought to the table is something that is very helpful in these cases.

Q I appreciate the fulsomeness of the answer. During the time that you served in these various fiduciary capacities, is it fair to say you spent a lot of time considering and addressing issues relating to D&O and other executive

liability issues?
A It's usually one of the things that you get involved with thinking about prior to taking on the role because you want to make sure that there are the appropriate protections for the director.
Q Can you describe for the Court some of the protections that you've sought or that you've seen employed in some of the cases you've worked on, including this one, by the way?
A Sure. I mean, one of the first things you look to is does the company -- will the company indemnify the director for serving in that capacity? And if the company will not indemnify, then there's always a question as to why not, and it's probably something you don't want to get involved with.
Generally, that is something that I don't think I've ever seen a case where there has not been indemnification. Obviously, it would, you know, cause great pause or concern if they weren't willing to indemnify. But that is important.
Providing D&O insurance is very important. And in most situations, you know, over the last 10-15 years, if there's not adequate D&O insurance -- quite often, the D&O insurance has been tapped out because of claims that will -- have been brought or are anticipated to be brought -- new D&O insurance is something that's front and center for the minds of independent directors such as myself.
As you -- that gets you into the case and gets you moving.

As you start to look towards the confirmation and exit from the case, things that would be appropriate, that, you know, would always be something you would want to look at would be exculpation language, releases. And in this particular case, the injunction, or what Mr. Seery earlier referred to as the gatekeeper clause, is something that is very important for directors, both, you know, as they're thinking through it and as they emerge.

Q All right. Let's shift now to this case, with that background. How did you learn about this case?

A I had a party who was involved in the case reach out to me in early part of December of 2019 to see if I would be interested in getting involved. I think that was about the time -- it was after -- as I recall, it was after the case had been moved to Dallas and when there was a -- consideration of either a Chapter 11 or a Chapter 7 trustee. I can't remember exactly which it was. But there was talk about a motion to bring on a trustee and get rid of all the management and the like and such.

Q Can you describe in as much detail as you can recall the facts and circumstances that led to your appointment as an independent director?

A Sure. I, as I said, I had -- early December, I had an -- one of the parties involved -- had, probably within the next week, probably two or three others -- that reached out to see

if I would be interested in participating. I met with the Creditors' Committee or -- I'm not sure if it was all the members, but representatives of the Creditors' Committee, along with counsel, and I believe financial advisors were involved. They walked me through the issues. They wanted to hear about my *C.V.* Quite a few of them knew me, knew me well, but others wanted to hear about my background and how I would look at things as an independent director.

That went through into the latter part of December. I knew that they were talking to other parties. I think it was probably right around the first of the year or so that I was informed, maybe a little bit earlier than that, that I was informed that Mr. Seery was one of the other parties that they were talking to, and Mr. Seery and I were put in touch with each other. I had worked with Mr. Seery back probably nine years earlier when I was the CEO of FGIC. He was involved in a matter that we were restructuring, and so knew him a little bit and was comfortable working with him as a, you know, another independent director.

Then we took the time that we had to to -- or, I took the time to -- from the beginning, you know, the early part of December, look at the docket, understand what was taking place. I -- in addition, I met with the company and its advisors, in-house counsel, the folks at DSI who were at the time the CRO and the company's counsel to better understand

some of the issues.

Mr. Seery and I, as I said, were both selected, and we went through the process of, I guess, breaking the tie, I think, if I could say it that way, amongst the creditors and the Debtor as to who would be the third member of the board. And we were given the opportunity to go out, interview, and select the third member, which resulted in Russell Nelms' appointment to the board. And also during that time, we were given the opportunity to have some input -- not a hundred percent input, but some input -- on the January 9th order that -- the January 9, 2020 order that was put in place appointing us and giving us some of the protections that we felt were appropriate and necessary in this case.

Q All right. We'll get to that in a moment, but during this diligence period, did you form an understanding as to why an independent board was being formed, why it was being sought?

A Yes. There was, my words, there was a lot of distrust between the creditors and the management -- not the CRO, but the prior management of the company -- and there had been a motion brought both to obviously bring the case back to Dallas from I think it was originally in Delaware and then there was a motion to seek, you know, to remove management and put in a trustee.

There had been a dozen years of litigation with one party, about eight or nine years with another major party, and

several other of the major creditors were litigants. The other, as I understood, the other creditors, main creditors in the case were all lawyers who had not yet gotten paid for the litigation work that they had done. And so it was obvious that this was a very -- a highly-litigious situation.

Q In addition to speaking with the various constituents, did you do any diligence on your own to try to understand the case before you accepted the appointment?

A Yes. I went to the docket to look at all the -- not every single thing that had been filed, but to try and look at all the key, relevant items that had been filed, get a better understanding of what was out there. Looked at some of the initial filings of the company in terms of the, you know, the creditors, to understand who the creditor base was per the schedules that had been filed. Looked at the -- some of the various pleadings that had been put in place.

Q Did you form a view as to the causes of the bankruptcy filing?

A Litigation. That was my clear view. This company had been in litigation with multiple parties, various different parties, since around 2008. Generally, you would see litigation like the types that were, you know, that were here, you know, you'd litigate for a while, then you'd try and settle it.

It did not appear to me that there was any intention on

the -- the Debtor to settle these litigations, but would rather just continue the process and proceed forward on the litigation until the very last minute. And so it was obvious that this was going to -- that the Debtor was a, as I said, a highly-litigious shop, and that was one of the causes, obviously, the cause of the filing, along with the fact that judgments were about to be entered against the Debtor.

Q All right. And in January 2020, do you recall that's when the agreement was reached between the Debtor, the Committee, and Mr. Dondero?

A Yeah, it was the first week or so, which resulted in a hearing on I believe it was January 9th in front of Judge Jernigan.

Q And as a part of that -- I think you testified at that hearing. Do I have that right?

A I don't recall if I did. I might have. I might have testified at a subsequent hearing. But --

Q But was --

A -- I was in the courtroom for that hearing, yes.

Q Was it part of that process by which you accepted the appointment as independent director?

A I accepted it based upon the order that had been negotiated amongst the parties, the creditors, the Debtor, Mr. Dondero, and others. And that was the key thing that was -- and approved by the Court on that date. And that was key for

my acceptance of the role as an independent director.
Q And did you and the other prospective independent directors participate in the negotiation of the substance of the agreement?
A We did. We didn't have a hundred percent say over it, but we were able to get our voices heard. As Mr. Seery testified earlier, he was instrumental in coming up with an idea about how to put in place the injunction, you know, the -- I think he referred to it as the gatekeeper injunction, which was obviously in this case very critical to all three of us: Mr. Seery, Mr. Nelms, and myself.
Q Can you describe for the Court kind of the issues of concern to you and the other prospective board members? What was it that you were focused on in terms of the negotiations?
A Well, obviously, indemnification was important, but that was something that was going to be granted. Having the right to obtain separate D&O insurance just for the three directors was important. We were concerned that Strand Advisors, Inc. really had no assets, and so we wanted to make sure that the Debtor was going to get -- was going to basically guarantee the indemnification.

The -- because of the litigious nature and what we had heard from all of the various parties involved, including people inside the Debtor who we had talked with, that it would be something that was important for us to make sure that the

injunction, the gatekeeper injunction was put in place.
Q And can you elaborate a little bit on I think you said you had done some diligence and you had formed a view as to the causes of the bankruptcy filing, but did this case present any specific concerns or issues that you and the board members had to address perhaps above and beyond what you experienced in some of the other cases you described?
A Well, as I said earlier, the fact that the litigation -- the various litigations with the creditors have been going on for what I viewed as an inordinate amount of years, and that it was clear from my diligence that I had done that this had been directed by Mr. Dondero, to keep this moving forward in the litigation, and to, in essence, just, you know, never give up on the litigation.

It was important that the types of protections that we were afforded in the January 9th order were put in place, because we -- none of us -- none of the three of us, and myself in particular, did not want to be in a position where we would be sued and harassed through lawsuits for the next, you know, ten years or so. That's not something anybody would want to sign up for.
Q All right. Let's look at the January 9th order and the specific provisions I think that you're alluding to.

MR. MORRIS: Can we call up Exhibit 5Q, please?

THE WITNESS: Pardon me while I put my glasses on to

read this.

MR. MORRIS: All right. And if we can go to Paragraph 4.

BY MR. MORRIS:

Q Is that the paragraph, sir, that was intended to address the concern that you just articulated about Strand not having any assets of its own?

A Yes, it is.

Q And can you just describe for the Court how that particular provision addressed that concern?

A Sure. Since we were directors of Strand, which is the general partner of the Debtor, we felt it was important that the general -- that Highland, the Debtor, would provide the guaranty on indemnification, because Highland had the assets to back up the indemnification.

It was also pretty clear, from my experience in having placed D&O insurance, you know, over the last 25-30 years, that if there was no, you know, opportunity for indemnification, putting in place insurance would be very difficult or exorbitantly expensive. So having this indemnification by Highland was a very important piece of the order that we were seeking.

Q And the next piece is the insurance piece in Paragraph 5. Do you see that?

A I do.

Q Did you have any involvement in the Debtor's efforts to obtain D&O insurance for the independent board?

A I did.

Q Can you just describe for the Court what role you played and what issues came up as the Debtor sought to obtain that insurance?

A Sure. The Debtors had been looking to get an insurance policy in place. They were not able to do that. I happen to have worked with an insurance broker on D&O situations in some very difficult situations over the years and brought them into the mix. They were able to go out to the market and find a policy that would cover us, the -- kind of the key components of that policy, though, were, number one, the guaranty that HCMLP would give -- I'm sorry, the guaranty that HCMLP would give to Strand's obligations, and also the -- I'll call it the gatekeeper provision was very important because these parties did not want to have -- they wanted to have what was referred to, commonly referred to as the Dondero Exclusion.

So while we were -- we purchased a policy that covered us, it did have an exclusion, unless there were no assets left, and then the what I'll call -- we refer to as kind of a Side A policy would kick in.

Q Okay. What do you mean by the Dondero Exclusion?

A The insurers did not want to cover the -- any litigation that Mr. Dondero would bring against directors. It was pretty

commonly known in the marketplace that Mr. Dondero was very litigious, and insurers were not willing to write the insurance without the protections that this order afforded because they did not want to be hit with frivolous -- hit with claims on the policy for frivolous litigation that might be brought.

MR. TAYLOR: Your Honor, this is Mr. Taylor. I've got to object to the last answer. He testified as to what the insurers' belief was and what they would or would not do based upon their own knowledge. It's not within his personal knowledge. And therefore we'd move to strike.

THE COURT: I overrule that objection.

MR. MORRIS: Your Honor?

THE COURT: I overrule the objection.

MR. MORRIS: Thank you. Thank you, Your Honor.

BY MR. MORRIS:

Q Mr. Dubel, can you explain to the Court, in your work in trying to secure the D&O insurance, what rule the gatekeeper provision played in the Debtor's ability to get that?

A Based upon my discussions with the insurance broker, who I have worked with for 25-plus years, had that gatekeeper provision not been put in place, we would not have been able to get insurance.

Q All right. Let's look at the gatekeeper provision.

MR. MORRIS: Can we go down to Paragraph 10, please?

Perfect. Right there.

BY MR. MORRIS:

Q Is this gatekeeper provision, is this also the source of the exculpation that you referred to?

A Yes.

Q And what's your understanding of how the exculpation and gatekeeper functions together?

A Well, my apologies, I'm not an attorney, so just from a business point of view, the way I look at this is that, you know, obviously, we're -- you know, the directors are not protected from willful misconduct or gross negligence, but any negligence -- you know, claims brought under negligence and the likes of such, and things that might be considered frivolous, would have to first go to Your Honor in the Bankruptcy Court for a review to determine if they were claims that should be entitled to be brought.

Q If you take a look at the provision, right, do you understand that nobody can bring a claim without -- in little i, it says, first determining -- without the Court first determining, after notice, that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against an indirect -- independent director. Do you see that?

A I do.

Q Is it your understanding that parties can only bring

claims for gross negligence or willful misconduct if the Court makes a determination that there is a colorable claim?

A That's my understanding.

Q And the second --

A I think they have the right -- I think they have the right to go to the Court to ask if they can bring the claim, but the Court has to make the determination that it's a colorable claim for willful misconduct or gross negligence.

Q And if the Court -- is it your understanding that if the Court doesn't find that there is a colorable claim of willful misconduct or gross negligence, then the claim can't be brought against the independent directors?

A That is my understanding, yes.

Q And was -- taken together, Paragraphs 4, 5, and 10, were they of importance to you and the other independent directors before accepting the position?

A They were absolutely critical to me and definitely critical to the other directors, because we all negotiated that together, and it would -- I don't -- I don't think any of the three of us would have taken on this role if those paragraphs had not been included in the order.

Q Okay. Just speaking for yourself personally, is there any chance you would have accepted the appointment without all three of those provisions?

A I would not have.

Q And why is that? In this particular case, why did you personally believe that you needed all three of those provisions?

A Well, you know, people like myself, you know, someone who's coming in as an independent director, come in in a fiduciary capacity. And, you know, we take on risks. Now, granted, in a Chapter 11 case, as the saying goes, you know, it's a lot safer because everything has to be approved by the Court, but there are still opportunities for parties to, in essence, have mischief going on and bring nuisance lawsuits that would take a lot of time and effort away from either the role of our job of restructuring the entity or post-restructuring, would just be nuisance things that would cost us money. And we, you know, I did not want to be involved in that situation, knowing the litigious nature of Mr. Dondero from the research that I had done, you know, the diligence that I had done. I did not want to subject myself to that. And it has proven an appropriate and very solid order because of the conduct of Mr. Dondero, as Mr. Seery has testified to earlier.

Q Do you have a view as to what the likely effect would be on future corporate restructurings if you and your fellow directors weren't able to obtain the type of protection afforded in the January 9th order?

A I think it would be very difficult to find qualified

people who would be willing to serve in these types of positions if they knew they had a target on their backs. You know, it was something that was clear to us, to Mr. Seery, Mr. Nelms, myself at the time, that if we had a target -- we felt like we would have a target on our back if we didn't have these protections.

It just wasn't worth the risk, the stress, the uncertainty, the potential cost to us. And so I don't think anybody else would be, you know, willing to take on the roles as an independent director with the facts and circumstances and the players involved in this particular case.

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

THE COURT: All right. Pass the witness. Let's see. You went -- I'm going to give a time. You went 32 minutes. So, for cross of this witness, I'm going to limit it to an aggregate of 32 minutes. Who wants to go first?

MR. DRAPER: Your Honor, this is Douglas Draper. I'll be happy to go first.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Dubel, prior to your engagement, did you happen to read the case of *Pacific Lumber*?

A I did not.

Q And were you advised about *Pacific Lumber* by somebody

other than a -- your lawyer?
A I'm not familiar with the case at all, Mr. Draper.
Q Are you aware, and you've been around a long time, that different circuits have different rules for liabilities of officers, directors, and people like that?
A I am aware that there are different, I don't know what the right term is, but precedents, I guess, in different circuits for any number of things, whether it's a sale motion or protections of officers and directors or anything. So each circuit has its own unique situations.
Q And one last question. On a go-forward, after -- if this plan is confirmed and on the effective date, you will not have any role whatsoever as an officer or director of the new general partner, correct?
A I have not been asked to. As Mr. Seery testified, he may ask for assistance or just -- in most situations that I'm involved with, I may have a continuing role just as a -- I'll call it an advisor or somebody to provide a history. But at this point in time, I have not been asked to have any involvement.
Q And based on your experience, you know that there's a different liability for a director and an officer versus somebody who is an advisor?
MR. MORRIS: Objection to the form of the question. No foundation.

THE COURT: Overruled.

MR. DRAPER: Mr. Dubel has shown --

THE COURT: Mr. Dubel, you can answer if you know.

MR. DRAPER: Mr. Dubel, you can answer.

THE WITNESS: I'm sorry, Your Honor, I didn't hear you say overruled. Thank you.

Mr. Draper, I apologize, could you repeat the question?

BY MR. DRAPER:

Q The question is you know from your experience that there's a different liability for somebody who is an officer or director versus somebody who's an advisor?

A Yes, that's my experience, which is why in several situations post-reorganization, while I have not been involved *per se*, and I use the term involved meaning, you know, on a day-to-day basis, if someone asks me to assist, I'll usually ask them to bring me in as a non -- an unpaid employee or a, you know, a nominally-amount-paid employee, so that I would be protected by whatever protections the company might provide.

MR. DRAPER: I have nothing further for this witness, Your Honor.

THE COURT: All right. Other cross?

MR. TAYLOR: Yes, Your Honor.

MR. RUKAVINA: Yes, Your Honor.

MR. TAYLOR: Oh, go ahead, Davor.

MR. RUKAVINA: No, Clay, go ahead.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Dubel, this is Clay Taylor here on behalf on Mr. Dondero. I believe you had previously testified in response to questions from Mr. Morris that Mr. Dondero had engaged in a pattern of litigious behavior; is that correct?

A I believe that's the testimony I gave, yes.

Q Okay. And please give me the specific examples of which cases you believe he has engaged in overly-litigious behavior.

A Well, all of the cases that resulted in creditors, large creditors in our bankruptcy. That would be the UBS situation, the Crusader situation which became the Redeemer Committee, litigation with Mr. Daugherty, with Acis and Mr. Terry. And as I mentioned earlier, I'd, you know, been informed by members of the management team that it was Mr. Dondero's style to just litigate until the very end to try and grind people down.

Q Okay. Was Mr. Dondero or a Highland entity the plaintiff in the UBS case?

A No, but what was referred -- what I was referring to was the nature in which he defended it and went overboard and refused to ever, you know, try and settle things in a manner that would have gotten things done. And just looking at, having been involved in the restructuring industry for the last 40 years, as I said, almost 40 years, and been involved

in many, many litigious situations, it's obvious when someone is litigious, whether they're the plaintiff or the defendant.

Q So are you personally familiar with the settlement negotiations in the UBS case that happened pre-bankruptcy, then?

A I have been informed that there were settlement negotiations, and subsequently determined, through discussions with the parties, that they weren't really close to -- to a settlement.

Q But are you aware of --

A Mr. Dondero might have thought they were, but they were not.

Q Okay. Would you be surprised to learn if UBS had offered to settle pre-bankruptcy for $7 million?

A As I understand, settlements -- settlement offers pre-bankruptcy had a tremendous number of -- I don't know what the right term is -- things tied to it and that clearly were never going to get done.

Q Okay. When you say things were tied to it, what things were tied to it?

A I don't know all of the settlement discussions that took place, but what I was informed was that there were a lot of conditions that were included in that. And it's -- if it had been an offer of $7 million and Mr. Dondero didn't settle for that, there must have been a reason why. So, you know, since

the entities -- all of the entities within the Highland Capital empire, if you'd call it that, were being sued for almost a billion dollars.

Q Okay. And you say there was lots of conditions that were tied to that. What were the conditions?

A As I said earlier, I wasn't informed of them on all the prepetition settlements. That's just what I was told, there was conditions.

Q Okay. And who were you told these things by?

A Both external counsel and internal counsel. Mr. Ellington, Scott Ellington, and Isaac -- the litigation counsel.

Q Okay. So --

A That's -- sorry.

Q Okay. In each of these cases, you were informed by your views by statements that were made to you by other people?

A Yes.

Q Okay.

A Made -- and particularly made by members of management of the Debtor, which is pretty informed.

Q Okay. Which members of management were those?

A As I just testified, it was Mr. Ellington, who was the general -- the Debtor's general counsel, and Mr. Leventon, Isaac Leventon, who was the -- I believe his title was associate general counsel in charge of litigation.

Q Okay. Thank you.

MR. TAYLOR: No further questions.

THE COURT: All right. Mr. Rukavina?

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Dubel, we've never met, although I think we were on the phone once together. I know you're a director, so you're at the top, but having been in this case for more than a year, you probably have some understanding of the assets that the Debtor has, don't you?

A I do, but I'm not as facile with it as Mr. Seery, obviously.

Q Sure. Is it true, to your understanding, that the Debtor owns various equity interests in third-party companies?

A Either directly or indirectly. That's my understanding, yes.

Q Okay. Have you heard of an entity called Highland Select Equity Fund, LP?

A I have.

Q And is that a publicly-traded company?

A I'm not familiar with its nature there, no.

Q Do you know how much of the equity of that entity the Debtor owns?

A I don't know off the top of my head, no.

Q And again, these may be unfair questions because you're at

the top, so I'm not trying to make you look foolish. I'm just trying to see. Let me ask one more. Have you heard of Wright, W-R-I-G-H-T, Limited?

MR. MORRIS: Objection, Your Honor. Beyond the scope.

MR. RUKAVINA: Your Honor, I can recall him on my direct, then.

THE COURT: Yeah. I'll --

MR. RUKAVINA: But I'd just rather get it over with.

THE COURT: I'll allow it.

MR. MORRIS: All right. If we're going to get rid of --

THE COURT: Overruled.

MR. MORRIS: No, that's fine.

BY MR. RUKAVINA:

Q Have you heard of Wright, W-R-I-G-H-T, Limited?

A I think I have, but I just don't recall it, Mr. Rukavina. I'm sorry, Rukavina. Sorry.

Q It's okay. It's a --

A I'm looking at your chart here, at your name here, and it looks like Drukavina, so I really apologize.

Q Believe it or not, it's actually a very famous name in Croatia, although it means nothing here.

So, all of the entities that the Debtor owns equity in, I guess you probably, just because, again, you're not in the

weeds, you can't tell us how much of that equity the Debtor owns, can you?

A I can't individually, no. You know, Mr. Seery is our CEO and he's responsible for the day-to-day, you know, issues. So usually we look at it more on a consolidated basis and not in the, you know, down in the weeds, as you refer to it, unless something specific came up.

Q Well, would you remember whether, when Mr. Seery or the prior CRO would provide you, as the board member, financial reports, whether that included P&Ls and balance sheets and financial reports for the entities that the Debtor owned interests in?

A We might -- we would have seen certain consolidating reports that might -- that would be, you know, consolidating financial statements that would be P&Ls. Where we didn't consolidate them, I'm not sure we saw the actual individual-entity P&Ls on a regular basis. We might have seen them if there was a transaction taking place. But again, you know, I don't have -- I don't remember every single one of them, no.

Q And you would agree with me, sir, that the Pachulski law firm is an excellent restructuring, reorganization, insolvency law firm, wouldn't you?

A Yes, I would agree with you there.

Q Okay. And you would expect them to ensure that anything that has to be filed with Her Honor is timely filed, wouldn't

you?
A I would expect that they would follow the rules.
Q Okay. And you have the utmost of confidence, I take it, in your CRO, don't you?
A I have a tremendous amount of confidence in our CEO, who also happens to hold the title of CRO, yes, if that's what you're referring to as, Mr. Seery.
(Interruption.)
MR. RUKAVINA: John.
BY MR. RUKAVINA:
Q Okay, I think -- yeah, I think I heard that you have tremendous confidence in the CEO, who happens to be the CRO, right?
A Yes, that's the case.
MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.
THE COURT: All right. Any other cross of Mr. Dubel? All right. Mr. Morris, redirect?
MR. MORRIS: Yeah, just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MORRIS:
Q You were asked about that *Pacific Lumber* case, Mr. Dubel; do you remember that?
A I do remember being asked about it.
Q And you weren't familiar with that case, right?

A I'm not familiar with the name of the case, no.
Q But you did know that the exculpation and gatekeeping provisions were going to be included in the order; is that fair?
A I did.
Q And did you testify that you wouldn't have accepted the position without it?
A I did testify that way.
Q And if you knew that you couldn't get those provisions in the Fifth Circuit, would you ever accept a position as an independent director in the Fifth Circuit on a go-forward basis?
A Not in a situation such as this, no.
Q Okay. Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Any recross on that narrow redirect?

All right. Well, Mr. Dubel, you are excused from the virtual witness stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. I want to go ahead and --

MR. DUBEL: Do you mind if I turn my video off?

THE COURT: I'm sorry, what?

MR. DUBEL: I said, do you mind if I turn my video off?

THE COURT: No, you may. That's fine.

MR. DUBEL: Thank you, Your Honor.

THE COURT: All right. I want to break now, unless there's any quick housekeeping matter. Anything?

MR. MORRIS: No, Your Honor, but I would just ask all parties to let me know by email if they have any objections to any of the exhibits on the witness list that was filed at Docket No. 1877, because I want to begin tomorrow by putting into evidence the balance of our exhibits.

MR. RUKAVINA: And Your Honor, I was responsible for this due to an internal mistake. The only ones I have an objection to are -- is that 7? John, is that 7, right, 7OO --

MR. MORRIS: Yes.

MR. RUKAVINA: Your Honor, I only have an objection to 7O and 7P, although I think -- think the Court has already admitted 7P, so my objection is moot.

THE COURT: I have.

MR. RUKAVINA: Okay.

THE COURT: So, what --

MR. RUKAVINA: Then it would just be --

THE COURT: Go ahead.

MR. RUKAVINA: I'm sorry. It would just be 7O. Septuple O or whatever the word is.

THE COURT: All right. So I will go ahead and admit 7F through 7Q, with the exception of 7O. Again, these appear

at Docket Entry 1877. And Mr. Morris, you can try to get in 7O the old-fashioned way if you want to.

MR. MORRIS: Yeah, I'll deal with 7O and the very limited number of other objections at the beginning of tomorrow's hearing.

THE COURT: All right.

(Debtor's Exhibits 7F through 7Q, with the exception of 7O, are received into evidence.)

THE COURT: So we will reconvene at 9:30 Central time tomorrow. I think we're going to hear from the Aon, the D&O broker, Mr. Tauber; is that correct?

MR. MORRIS: That's right. And that should be shorter than even Mr. Dubel.

THE COURT: All right. Well, we will see you at 9:30 in the morning. We are in recess.

MR. MORRIS: Thank you so much.

THE CLERK: All rise.

(Proceedings concluded at 5:09 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 **02/04/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

INDEX
Page 2

EXHIBIT 74

CAUSE NO. DC-23-01004

IN RE:	§	IN THE DISTRICT COURT
HUNTER MOUNTAIN INVESTMENT TRUST,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	191ST JUDICIAL DISTRICT

ORDER

Came on for consideration *Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition* ("Petition") filed by petitioner Hunter Mountain Investment Trust ("HMIT"). The Court, having considered the Petition, the joint verified response in opposition filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill"), HMIT's reply, the evidence admitted during the hearing conducted on February 22, 2023, the argument of counsel during that hearing, Farallon's and Stonehill's post-hearing brief, the record, and applicable authorities, concludes that HMIT's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that HMIT's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 8th day of March, 2023.

HONORABLE GENA SLAUGHTER

EXHIBIT 75

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Hunter Covitz
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Hunter Covitz c/o David Neier, Winston Strawn LLP 200 Park Avenue New York, NY 10166	Hunter Covitz 6612 Sondra Drive Dallas, TX 75214
Contact phone 21229467005391	Contact phone
Contact email dneier@winston.com	Contact email HCov2020@yahoo.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ not less than 250,000.00 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

   Employment - see attached

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020
MM / DD / YYYY

/s/Hunter Covitz
Signature

Print the name of the person who is completing and signing this claim:

Name: Hunter Covitz
First name | Middle name | Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: _____

Contact phone: _____

¨1¤}HV4%:
1924[illegible]20052600000000011

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
Hunter Covitz
c/o David Neier, Winston Strawn LLP
200 Park Avenue

New York, NY, 10166

Phone:
21229467005391
Phone 2:

Fax:
212-294-4700
Email:
dneier@winston.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
Hunter Covitz

6612 Sondra Drive

Dallas, TX, 75214

Phone:

Phone 2:

Fax:

E-mail:
HCov2020@yahoo.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Employment - see attached

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
not less than 250,000.00

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Hunter Covitz on 26-May-2020 3:14:11 p.m. Eastern Time
Title:

Company:

VN: D7283EB4FCC29AF1DC458E68B98EC4DC

Fill in this information to identify the case:

Debtor 1: Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing): _____

United States Bankruptcy Court for the: Northern District of Texas

Case number: 19-34054-SGJ-11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Hunter Covitz
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
David Neier, Winston & Strawn LLP Name	Hunter Covitz Name
200 Park Avenue, 40th Floor Number Street	6612 Sondra Drive Number Street
New York NY 10166 City State ZIP Code	Dallas TX 75214 City State ZIP Code
Contact phone 212-294-5318	Contact phone (214) 306-5710
Contact email dneier@winston.com	Contact email hcov2020@yahoo.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 250,000.00 . **Does this amount include interest or other charges?**
NOT LESS THAN THE ABOVE AMOUNT, SEE ATTACHED
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Employment (see attached)

9. **Is all or part of the claim secured?**
☑ No Except for setoff/reimbursement. See attached.
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: **SEE ATTACHED**

Basis for perfection: **SEE ATTACHED**
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $____
Amount of the claim that is secured: $____
Amount of the claim that is unsecured: $____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $____

Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: ____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

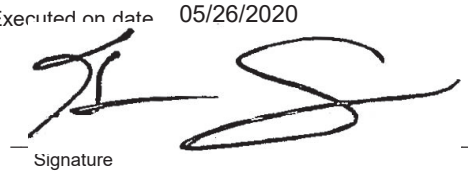
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020



_____ Signature

Print the name of the person who is completing and signing this claim:

Name: Hunter Covitz
First name | Middle name | Last name

Title: _____

Company: _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 6612 Sondra Drive
Number Street

Dallas | TX | 75214
City | State | ZIP Code

Contact phone (214) 306-5710 Email hcov2020@yahoo.com

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	
	§	Case No. 19-34054-SGJ-11
	§	
Debtor.	§	

ATTACHMENT TO PROOF OF CLAIM

1. Hunter Covitz ("Claimant") submits this attachment to his proof of claim (the "Claim") against Debtor Highland Capital Management, L.P. ("Highland" or the "Debtor") in the above-captioned Chapter 11 case (the "Case").

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware, commencing the Case, which was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). On April 3, 2020, the Bankruptcy Court entered an order establishing May 26, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for the Debtor's employees to file claims against the Debtor that arose before the Petition Date. *See* ECF No. 560.

Compensation.

3. Claimant is an employee of the Debtor. Claimant is owed compensation for his services, including, without limitation, (i) all salaries and wages; benefits; (ii) bonuses (including performance bonuses, retention bonuses, and similar awards), (iii) vacation and paid time off, and (iv) retirement contributions, pensions and deferred compensation. The amount of the Claim for

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

such compensation includes both liquidated and unliquidated amounts. Furthermore, such claims may be in the form of stock, including stock of entities other than the Debtor, or the cash equivalent thereof to be paid or caused to be paid by the Debtor to Claimant, including dividends that continue to accrue on such stock. Documents supporting this Claim contain personal confidential information of Claimant and, as more fully set forth below, shall be provided by counsel to Claimant under separate cover to counsel for the Debtor upon written request therefor.

4. In addition to the foregoing, Claimant is entitled to reimbursement for travel and other business related expenses incurred in connection with performing any services to which the Claimant is entitled. Claimant has previously provided or will provide to the Debtor details with respect to the amount of reimbursement that is owed.

Indemnification.

5. Claimant is an employee of the Debtor. Claimant is entitled to indemnification, including, without limitation, for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business. As part of the Claim for indemnification, Claimant is entitled to, among other things, contribution, reimbursement, advancement, or other payments, including for damages, costs, and expenses, related thereto. The Claim for indemnification includes both liquidated and unliquidated amounts, including, without limitation, attorneys' fees and expenses that continue to accrue. Among other things, the Claim for indemnification includes, but is not limited to, indemnification for all claims, liabilities, damages, losses, fees, expenses, and costs related to the following matters (the "Indemnified Matters"): *Acis Capital Management, L.P., Acis Capital Management, GP, LLC, Reorganized Debtors v. James Dondero, Frank Waterhouse, Scott Ellington, Hunter Covitz, Isaac Leventon, Jean Paul Sevilla, Thomas Surgent, Grant Scott,*

Heather Bestwick, William Scott, and CLO Holdco, Ltd., Case No. 20-03060, pending in the Bankruptcy Court;

6. The Claim Amount in Part 2, Question 7 of Form 410 attached hereto does not include any amount of alleged damages claimed in the Indemnified Matters. Claimant reserves the right to amend, supplement, or modify the Claim to include alleged damages amounts.

7. In addition to the foregoing, Claimant is entitled to the benefits of the Debtor's directors' and officers' insurance programs and any other insurance policies that provide coverage for Claimant.

8. The Claim for indemnification is based on applicable law, the Debtor's organizational documents, contracts, agreements, arrangements, and corporate employee policies, including, without limitation, that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated as of December 14, 2015 ("LPA") and to the Resolution of the Board of Directors of Strand Advisor, Inc. as General Partner of the Debtor, dated May 12, 2020 ("Resolution"). Pursuant to LPA §4.1(h) and the Resolution, Claimant is entitled to indemnification from the Debtor for all acts performed or omitted to be performed on behalf of or in connection with the Debtor's business.

9. Documents supporting this Claim (i) are in the possession of the Debtor; (ii) are too voluminous attach hereto; and (iii) contain personal confidential information of the Claimant. The supporting documentation is available (subject to entry of appropriate confidentiality agreements and redaction of personal identification information to the extent necessary) upon written request to counsel for Claimant as set forth below.

10. Claimant reserves the right to amend, supplement or modify the Claim at any time. The Claim include amounts that continue to accrue, including interest as permitted by contract or law.

11. Claimant reserves its rights to pursue claims (including but not limited to the claims described herein) against the Debtor based upon additional or alternative legal theories and reserves the right to file additional or other pleadings to assert any of the amounts set forth in this Claim or any amendments thereto, including, without limitation, any postpetition administrative expenses pursuant to the Bankruptcy Code, including sections 503 and 507 thereof, or other applicable non-bankruptcy law.

12. This Claim is filed to preserve any and all claims, rights, and entitlements, including contingent claims, that the Claimant may have against the Debtor, and nothing herein should be construed as an admission that any valid claims or causes of action exist against Claimant.

13. To the extent that the Debtor asserts claims against Claimant, Claimant reserves the right to assert that such claims are subject to rights of setoff and/or recoupment, whether or not arising under the transactions set forth in this Claim, which rights are treated as secured claims under the Bankruptcy Code, and state and federal laws of similar import as well as in equity.

14. Claimant does not waive any of its rights to claim specific assets or any other rights or rights of action that Claimant has or may have against the Debtor, and Claimant expressly reserves such rights. Claimant reserves all rights accruing to it against the Debtor, and the filing of this Claim is not intended to be, and shall not be construed as, an election of remedy or a waiver or limitation of any rights of any Claimant.

15. The filing of this Claim is not and shall not be deemed or construed as: (i) a waiver, release or limitation of Claimant's rights against any person, entity, or property; (ii) a waiver,

release or limitation of Claimant's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court; (iii) a waiver of Claimant's right to move to withdraw the reference with respect to the subject matter of this Claim, any objection thereto and/or other proceeding which may be commenced in this case against or otherwise involving Claimant; or (iv) a consent by Claimant to the final determination or adjudication of any claim or right pursuant to 28 U.S.C. § 157(c).

16. All matters concerning this Claim, including any request for supporting documentation or additional information regarding this Claim should be made in writing directed to the following counsel for Claimant:

WINSTON & STRAWN LLP
David Neier
dneier@winston.com
200 Park Avenue, 40th Floor
New York, NY 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700

EXHIBIT 76

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

NEXPOINT DIVERSIFIED REAL ESTATE TRUST,

Plaintiff,

Index No. _____

- against -

ORIGINAL COMPLAINT

ACIS CAPITAL MANAGEMENT, L.P., JOSHUA N. TERRY, and BRIGADE CAPITAL MANAGEMENT, LP

Defendants.

----------X

Plaintiff NexPoint Diversified Real Estate Trust ("NexPoint" or "Plaintiff") respectfully files this action seeking disgorgement of misappropriated moneys and to recover damages caused by the gross malfeasance of Defendants Acis Capital Management, L.P. ("Acis"), Brigade Capital Management, LP ("Brigade"), and Joshua N. Terry ("Terry"), as registered investment advisors ("RIAs" or "Defendants" and each a "Defendant").[1] The Defendants are jointly and severally liable for breaches of fiduciary duty with respect to the management of a fund of collateralized loan obligations ("CLOs") that NexPoint invested in.

The acts and omissions which have come to light reveal a pattern of conduct that is in breach of fiduciary duty both under New York law and as imposed by the Investment Advisers Act of 1940, among other things, which have caused and/or likely will continue to cause Plaintiff damages.

[1] This action is expressly intended to be predicated solely on claims that accrued after February 15, 2019, which is the effective date of Bankruptcy Court order exculpating Defendants from liability as of that date and enjoining any lawsuit or action seeking to recover for liability accruing on or prior to that date. Nothing in this Action is intended to violate said injunction or order.

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

SUMMARY OF THE ACTION

1. Defendants managed and advised ACIS CLO-2014-2, Ltd. ("ACIS 2"), ACIS CLO-2014-3, Ltd. ("ACIS 3"), ACIS CLO-2014-4 Ltd. ("ACIS 4"), ACIS CLO-2014-5 Ltd. ("ACIS 5"), and ACIS CLO-2014-6, Ltd. ("ACIS 6") (any two or more, the "CLOs").

2. In a classic "let's rob Peter to pay Paul" scheme, the RIAs have:

- Knowingly charged the CLOs exorbitant amounts of "expenses" without accountability or justification;
- Knowingly caused the CLOs to purchase loans that failed to meet credit quality tests and average life tests, and caused the entire portfolio to fail the applicable collateral quality tests;
- Knowingly caused the CLOs to sell valuable assets cheaply; and
- Knowingly breached industry standards for things like best execution when buying and selling assets of managed funds.

3. To put it simply, since after February 16, 2019, through the combined effect of the above malfeasance, Defendants have wiped out millions in value from the CLOs and have hamstrung NexPoint from recouping its investment.

4. The impact on NexPoint is substantial. It owns millions in equity of ACIS 6. Defendants have caused the net asset value of the ACIS 6 equity to plummet. Defendants have thus caused Plaintiff to suffer over millions in losses.

5. These are not just ephemeral numbers. Plaintiff represents the interests of thousands of investors who rely on the promised security of these types of investments to provide cash flow and to fund things like retirements and college tuitions.

6. Plaintiff invested in the CLOs because, if managed in the way provided for in the indentures and portfolio management agreements ("PMAs"), they are secure and relatively safe diversified investments.

7. The economic purpose of investing in CLOs is obliterated where, as here, the RIAs manage the CLOs for their own ends, extending the life of the existing portfolio so as to maximize fees and prohibiting the noteholders from making redemptions. The Defendants are legally obligated fiduciaries who have to look out for the best interests of the advised funds, *i.e.*, the CLOs and their investors.

THE PARTIES

8. Plaintiff NexPoint Diversified Real Estate Trust, a Delaware statutory trust, is a publicly traded real estate investment trust. At the time of the events herein, it was denoted "NexPoint Strategic Opportunities Fund," a Delaware closed-end trust. Its principal place of business is in Dallas, Texas. Interests in NexPoint are owned by people nationwide and traded on the New York Stock Exchange (NYSE: NXDT).

9. Joshua N. Terry is an individual resident of Dallas County, Texas, located at 3509 Princeton Avenue, Dallas, Texas, 75205, and is thus a citizen of Texas, who may be personally served wherever he may be found. Terry is the owner and President of Acis.

10. Defendant Acis Capital Management, L.P. ("Acis") is a Delaware limited partnership. Acis may be served through its registered agent Capitol Services, Inc., located at 1675 S. State Street, Suite B, Dover, Delaware 19901, or wherever it may be found. Acis is a registered investment advisor.

11. Defendant Brigade Capital Management, LP is a Delaware limited partnership registered to do business in and with its principal place of business in, the state of New York. Brigade may be served through Donald E. Morgan, III, 399 Park Avenue, 16th Floor, New York, New York, 10022, or wherever it may be found. Brigade is a registered investment advisor.

12. Non-party U.S. Bank N.A. was the trustee for ACIS-6.

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over each Defendant pursuant to CPLR § 301 and/or CPLR § 302.

14. Personal jurisdiction and venue over Acis are proper because the governing documents—the indentures and portfolio management agreements—to which it is bound requires it to agree to submit to the jurisdiction of New York and to waive any objection to New York as a forum and venue. Acis is authorized to and regularly conducts business in the state of New York and is accused of torts directed at the state of New York, at least in part. Furthermore, the acts and/or omissions giving rise to the causes of action herein occurred in whole or in part in this county and affected property situated in this county.

15. Jurisdiction and venue over Brigade are proper in this county because Brigade is registered to do business in New York, and the transactions and occurrences that are the subject of NexPoint's claims against Brigade, including certain advice, communications, and trading activity with brokers or dealers, took place in whole or in part in this county.

16. Jurisdiction and venue over Terry are proper in this county because Terry is bound by the indenture clauses cited above, and he committed torts that are the subject of NexPoint's claims against him that occurred within or were directed to New York, including through certain trading activity with brokers or dealers within New York or to New York.

FACTUAL BACKGROUND

A. A BRIEF PRIMER ON CLOS

17. Collateralized loan obligations ("CLOs") are a specific type of structured financial transaction. CLOs are usually comprised of a mixture of publicly available, floating rate, senior-secured debt instruments issued by corporations (collectively, the "CLO Assets").

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

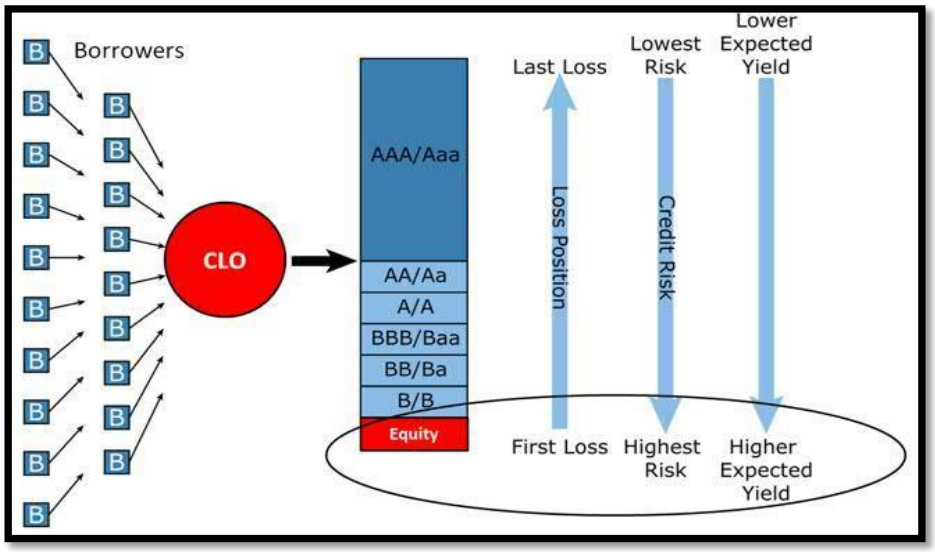
18. These loans are pooled together and then funneled into a trust entity known as a special purpose vehicle ("SPV"). The pooled loans within an SPV constitute the assets of a CLO.

19. To fund the purchases of these loans, SPVs raise equity funds from one or more equity investors, and then they raise additional cash in the form of debt, usually from the public markets by issuing notes to third-party investors (collectively, the "CLO Notes").

20. It is standard for this debt to be arranged in tranches—the most senior debt is paid back first but bears the lowest expected yield (*i.e.*, smallest interest rate), whereas the most junior debt is paid back next-to-last but bears the highest expected yield (*i.e.*, largest interest rate). Characterized differently, the greater the seniority of the debt, the less relative risk the investor carries.

21. After all debt, regardless of seniority, is paid out and all defaults have been taken on, the equity holders are paid. The character of incoming funds cascading down the tranches to pay the debt in descending seniority order, and then the equity holders last, is frequently referred to as the "payment waterfall."

22. This general structure is depicted this way:



FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

23. The CLO assets are the source of cash flow that pay a CLO's expenses, followed by the principal and interest payments due on the CLO notes—which go to the CLO's noteholders. Any cash remaining at the end of each quarter was typically paid to the equity holders.

24. In other words, equity holders take on the most risk of any investor in a CLO. The value of their equity increases as incoming cash flows from the CLO Assets pay the operating expenses and interest on the CLO Notes, and then pay down the principal on the debt tranches.

25. As the principal of the debt tranches is paid down, as long as cash flows from the asset base continue in an amount that is greater than the cost of servicing the debt and the expenses, the equity will realize more and more of the benefits.

26. Other than the investors themselves, the key parties to the success or failure of a CLO are (1) the portfolio manager, (2) the advisor, and (3) the indenture trustee.

27. Each of these parties is bound together by a contract known as an "indenture." Indentures are governed by federal law—namely, the Trust Indenture Act of 1939 and the Trust Indenture Reform Act of 1990, as well as their enacting regulations.

28. The portfolio manager's role is two-fold: The first is to identify and purchase the CLO Assets, doing so in a manner that creates the cash flow necessary to satisfy a CLO's debt-service requirements (*i.e.*, the payout, diversification, credit-quality, and average-life requirements) while not exposing the CLO to non-market risks. The second is to monitor the CLO Assets to ensure that over time the individual CLO Assets continue to meet various collateral-quality, which are designed to ensure a CLO can meet its debt-service requirements all the while producing income for equity holders. This latter task usually requires the portfolio manager to monitor each CLO asset to ensure that the CLO has a mix of assets in different

industries or markets, with differing maturity dates within acceptable risk profiles, and within a variety of credit ratings. This aspect of the portfolio manager's job normally includes selling assets that are deteriorating and buying assets that are superior to assets in the portfolio—otherwise, investing too much of the portfolio in any one of these categories overexposes a CLO to risk and may well lead to losses.

29. The portfolio manager is typically subject to a separate agreement called the portfolio management agreement ("PMA").

30. The portfolio manager also often serves as the primary investment advisor and may also outsource or delegate certain functions to one or more sub-advisors.

31. Advisors are required to be "Registered Investment Advisors" under federal law, which imposes robust non-waivable fiduciary duties, as discussed in greater detail below. One such duty is to maintain the best interest of the investors and to make investment decision that are suitable to the investors' assumption of risk.

32. As compensation for the role with a CLO, portfolio managers receive a percentage of the "assets under management" ("AUM"), which is determined by the face value, also known as par value, of the CLO Assets.

33. Because of this compensation structure, if left unchecked, portfolio managers can maximize their take-home pay by purchasing debt instruments with the highest par value, irrespective of the quality of these assets.

34. Because lower-credit-quality debt instruments are cheaper than those of higher quality, portfolio managers can acquire a greater number of these lower-quality loans and pool them in the SPV to manipulate the CLO's fee structure to their own benefit.

35. Doing so allows portfolio managers to achieve the largest par value in the

aggregate as possible and thereby charge the largest fees for themselves.

36. Pursuing this investing strategy would allow portfolio managers to earn significantly more in fees over a longer period of time, even though doing so exposes a CLO (and, thereby, the noteholders and equity holders) to significantly more risk on account of the longer maturities and lower credit ratings of these lower-quality debt instruments.

37. This is where indenture trustees play their part—they prevent portfolio managers from engaging in such behavior by monitoring changes in the CLO assets and in the portfolio's credit quality and maturity.

38. Indenture trustees have various tools to monitor and protect the security and soundness of CLO assets, two of which are the weighted average rating factor ("WARF") and the weighted average life ("WAL").

39. The WARF demonstrates the credit quality of a CLO's entire portfolio. WARF is calculated by taking the credit rating of each debt instrument in the CLO, determining the percentage of the CLO portfolio that each instrument constitutes, and aggregating those to a factor of the portfolio's notional balance. The better the WARF, the lower the risk to a CLO's investors.

40. The WAL demonstrates average maturity of the debt instruments in the CLO, *i.e.*, the riskiness of the entire portfolio with respect to the time until the principal is repaid. Calculating the WAL yields the average number of years for which each dollar of unpaid principal on an investment remains outstanding. This metric is important because, in general, investors want to be paid back sooner rather than later. Longer payouts typically mean greater exposure to risk because of unforeseen circumstances, *e.g.*, inflation, default risk, etc. Therefore, the shorter the maturity dates, the better the WAL—and, accordingly, the lower the risk to a

CLO's investors.

41. Together, the WARF and the WAL are effective gauges to evaluate whether CLO Assets are becoming too risky. Thus, indenture trustees have several tools to monitor and rein in portfolio managers in order to protect a CLO's noteholders and equity holders.

B. NexPoint Invests in the ACIS CLOs

42. In this case, Acis was the portfolio manager. Mr. Terry is the president, owner, and primary advisor of Acis. Brigade is the sub-advisor to Terry and Acis.

43. Between 2014 and 2016, NexPoint became a holder under the indenture dated April 16, 2015, among Acis CLO 2015-6 Ltd. and Acis CLO 2015-6 LLC (together "ACIS-6"). The value of the equity was approximately $7,500,000 at the time.

44. NexPoint invested in the indenture for ACIS-6 (the "Acis Indenture") as part of its mission and as a secure and safe investment on behalf of its investors.

45. U.S. Bank agreed to serve as the trustee for the Acis Indenture. Acis came onboard as the portfolio manager, and Highland Capital Management L.P. ("Highland") served as the sub-advisor.

46. The Acis Indenture imposed several obligations on Acis as the portfolio manager and U.S. Bank as the trustee.

47. Additionally, the PMAs for the Acis CLOs impose obligations on Acis as the portfolio manager, generally requiring Acis to "supervise and direct the investment and reinvestment of the Assets" and to "monitor the Assets."

48. These PMAs also impose liability on U.S. Bank as a third-party beneficiary in its role as indenture trustee.

49. When Terry took over Acis in August 2018, Acis continued to serve as portfolio manager to the Acis CLOs, but Terry became the advisor.

50. As a result of having neither the labor force nor the wherewithal to manage the Acis CLOs on its own, Acis retained Brigade to assist the company and Terry to provide these portfolio management services as a sub-advisor.

51. As RIAs, Acis, Terry, and Brigade are subject to the Investment Advisers Act of 1940 (the "Advisers Act").

52. As part of the Acis bankruptcy proceeding (the "Acis Bankruptcy")[2] in which Terry became 100% owner of Acis (as well as its president and owner of its general partner), the United States Bankruptcy Court for the Northern District of Texas formally approved Acis's appointment of Brigade as sub-advisor and shared-services provider to Acis in connection with Acis's management of the Acis CLOs. At all pertinent times through the present, Brigade has provided these services.

53. As a sub-advisor, Brigade is the agent of Acis and, therefore, of the Acis CLOs. Upon information and belief, Terry needed help managing the Acis CLOs, so he retained Brigade to provide advisory services, as well as back-and middle-office functions, including, but not limited to, accounting, payments, operations, technology, and finance, among other things, in connection with Acis's obligations under the PMAs.

54. Terry additionally employed Brigade to assist in the negotiation and execution of all documents necessary to acquire or dispose of assets under the PMAs. He further delegated to Brigade certain tasks related to the Acis CLOs, including, but not limited to, identifying potential assets (and their buyers and sellers) and modeling ratings, default, and price scenarios as needed. In providing these critical portfolio management services for the Acis CLOs, Brigade works

[2] The two case numbers in the consolidated Bankruptcy Proceeding include Case Nos. 18-30264-SGJ-11 and 18-30265-SGJ-11.

directly with and for Terry. Terry testified in the Acis bankruptcy proceedings that he intended for this arrangement.

55. Critically, although Terry effectively approves all trading activity for the Acis CLOs, Terry and Acis have no executive level employees aside from Terry, and, upon information and belief, they do not possess the ability to manage the CLO Assets effectively. As president and sole owner of Acis, Terry exercises complete dominion over the company and its activities. Absent a chain of command or support system, Terry answers to nothing other than his greed and self-interest.

56. Given the far-reaching extent of Brigade's involvement in managing the CLOs' portfolios, Brigade's conduct—and by extension Acis's conduct through Terry's direction and control—severely and adversely impacted the portfolios of the Acis CLOs in which NexPoint is a noteholder and equity holder.

57. Acis paid Brigade as though Brigade were another portfolio manager or advisor for its portfolio management services. As of February 20, 2019, Brigade had charged Acis fifteen basis points on the Acis CLOs' assets, a fee which Brigade represented to have been negotiated in good faith with Acis.

58. Prior to the Acis Bankruptcy, Highland managed the Acis CLOs, serving as a sub-advisor to Acis. One of the original investment vehicles, Acis CLO-7, continued to be managed by Highland after the RIA Defendants took over control of the other Acis CLOs.

59. Since August 2, 2018, the RIA Defendants have managed the Acis CLOs subject to the indentures and PMAs, which require them to "comply with all [applicable] terms and conditions of the [Acis Indenture]" and "perform [their] obligations . . . in good faith and with

reasonable care." The Acis Indenture's applicable "terms and conditions" obligate the RIA Defendants to ensure compliance with collateral quality tests described above. [3]

60. Moreover, Section 8 of the PMAs prohibits the portfolio manager—here, Terry, Acis, and Brigade—from "taking any action that would intentionally, or with reckless disregard . . . adversely affect the interest of the Holders in the Assets in any material respect,"[4] unless approved in writing by, among others, a majority of both the controlling class and the subordinate noteholders.

61. The PMAs hold Acis liable for its acts or omissions, including, but not limited to, acting in bad faith, willful misconduct, gross negligence, or reckless disregard in the performance of its obligations under the Acis Indenture.

62. Notably, Section 11(a)(i) of the PMAs expressly holds Acis liable for any decrease in the value of the Acis CLOs as a result of bad faith, willful misconduct, gross negligence, or reckless disregard in the performance of its obligations.

63. As portfolio manager, advisor, and sub-advisor, respectively, Acis, Terry, and Brigade were aware that they performed services for the Acis CLOs for a particular purpose.

64. The RIA Defendants also understood, and were fully aware, that investors in the Acis CLOs, like NexPoint, relied on them to perform services in furtherance of their collective duty to manage the portfolios of the Acis CLOs diligently.

[3] *See, e.g.*, Indenture 4 at p. 15 (*see* definition of "Collateral Quality Test"), p. 37 (*see* definition of "Market Value"), and §§ 1.2, 7.18, and 12; Indenture 5 at p. 14 (*see* definition of "Collateral Quality Test"), p. 36 (*see* definition of "Market Value"), and §§ 1.2, 7.18, and 12; Indenture 5 at p. 14 (*see* definition of "Collateral Quality Test"), p. 36 (*see* definition of "Market Value"), and §§ 1.2, 7.18, and 12; Indenture 6 at p. 14 (*see* definition of "Collateral Quality Test"), p. 35 (*see* definition of "Market Value"), and §§ 1.2, 7.18, and 12.

[4] *See* Portfolio Management Agreement between Acis CLO 2015-6 and Acis Capital Management, L.P. Section 8, page 15.

65. Despite the extra-contractual duties the RIA Defendants owe to NexPoint (and in furtherance of clear and impermissible conflicts of interest), from February 15, 2019[5] to the present, the RIA Defendants caused the Acis CLOs, including Acis 6, to incur astronomic, unprecedented expenses, which were well outside the Acis CLOs' historical expense patterns—and, as discussed in more detail below, very clearly outside market and industry norms.

66. Further, U.S. Bank failed to uphold its duty as trustee to the Acis Indenture to ensure that every purchase and sale under the indenture maintained or improved any failing collateral quality test. U.S. Bank further failed in its fiduciary capacity by allowing transactions to be effectuated that do not maintain or improve the Acis Indenture's failing WAL metric.

67. Moreover, Defendants attempted to offset transactions that the Acis Indenture prohibited by making same-day, bulk purchases of loans with non-failing WALs but that were overpriced or bad investments based on, among other factors, the loans' coupon return rates being lower than the expense to acquire them.

68. Finally, to add insult to injury, the Bankruptcy Court Order, through Plan D, imposes several provisions that directly affect the Acis CLOs' investors. Among other restrictions, Plan D inhibits the ability of the noteholders and equity holders to make optional redemptions, which prohibits the beneficial trading (and free flow of the investors' capital) that would protect the pecuniary interests of the Acis CLOs' investors.

69. Put differently, the capital of both the noteholders and equity holders have effectively been held hostage, allowing Acis to covet this capital belonging to the CLOs' investors.

[5] Effective February 15, 2019, the Bankruptcy Court issued an order (the "BK Order") that (1) released any claims against Acis or Terry that accrued prior to the effective date and (2) enjoined any lawsuit from being filed against Acis or Terry to recover on any claims that accrued prior to the effective date.

C. HOW DID THE RIA DEFENDANTS DECIMATE THE ACIS CLOS' VALUE AND INTEGRITY?

70. Before Terry took the reins of Acis, the Acis CLOs, under Highland's management, had produced consistent distributions to equity holders over time.

71. Since Terry assumed control of Acis, this is no longer the case. Payouts to Acis CLOs' equity holders have been far and few between, and these equity holders, by means of the BK Order, have been prevented from making redemptions to recoup the remaining value of their initial investments.

72. Under Terry's management, Acis replaced shorter-term debt with longer-term loans, extending the WAL of the CLOs' portfolios.

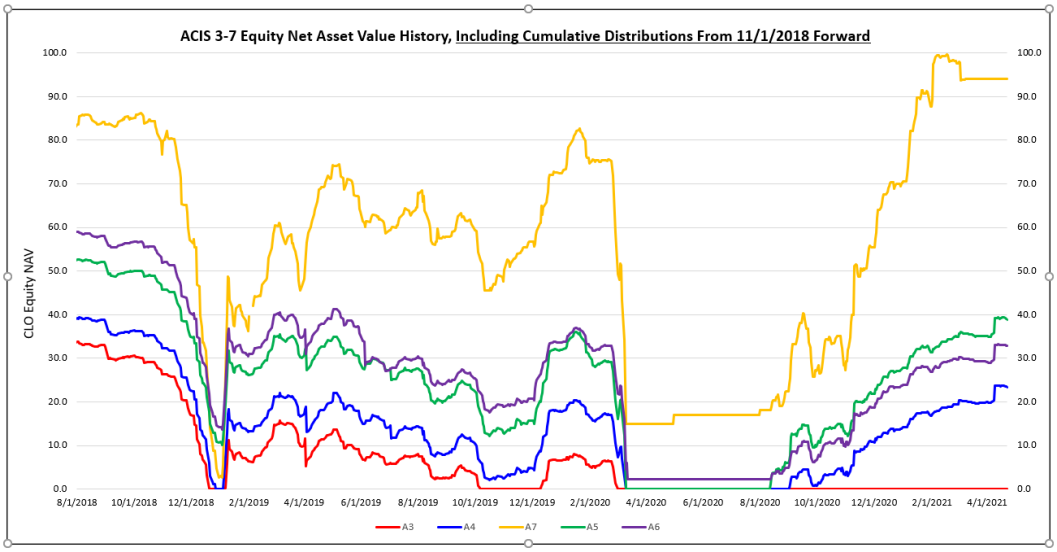
73. This course of conduct extended the average life of the CLO Assets and allowed prepayments to be avoided, which resulted in, among other things: (1) increased risk, (2) decreased residual principal value, and (3) longer artificially induced periods for interest accrual.

74. Predictably, and as explained in greater detail below, Terry's tactics have decimated the value of the assets constituting the Acis CLOs. In the meanwhile, the revenue and profit to Acis and Terry have increased significantly due to artificially inflated fees, the exorbitant yet unexplained expenses foisted on the Acis CLOs, and the extended life of the CLOs.

75. The value of the Acis CLOs' assets is understood through an assessment of net asset value ("NAV") of the CLOs' equity.

76. Because any equity is junior to all debt, healthy equity signifies healthy debt. Unhealthy equity (or, worse yet, equity that has been wiped out) signifies potential default at least as to the junior debt tranches.

77. The Acis CLOs' NAV over time (counting the distributions made to equity) can be seen via the following graphic illustration:



78. The NAV of the ACIS-6 equity has been reduced to approximately thirty cents on the dollar as of April 1, 2021.

79. This data makes it no small wonder that national CLO rankings place each Terry-managed CLO at the bottom of every list in terms of performance.

80. Yet, despite beginning with similar profiles and investment goals as the other Acis CLOs, ACIS-7, which remains under Highland's management, has done remarkably well, returning almost one hundred cents on the dollar.

81. Thus far, Plaintiff has discerned three primary ways that the RIA Defendants have eradicated the value of the Acis CLOs.

1. Mis-Accruing and Mis-Allocating Expenses

82. Prior to Terry and Brigade advising the Acis CLOs, the Acis CLOs paid out millions of distributions to the equity holders, and expenses, as a percentage of those distributions, were remarkably low.

83. The expenses saddled on the Acis CLOs since February 15, 2019, have been nothing short of impressive. They literally inverted the relative cost-to-distributions ratio that had been in place for years prior.

84. The following graphic depicts that inexplicable inversion:

Expenses Paid before Highland was removed

Date	A3	A4	A5	A6	Total
11/1/2017	53,366	74,533	75,099	97,077	300,075
2/1/2018	45,996	79,541	97,729	149,641	372,907
5/1/2018	32,194	15,635	11,723	-	59,552
8/1/2018	-	27,653	39,900	33,217	100,771
Total	**131,557**	**197,363**	**224,450**	**279,935**	**833,305**

Equity Distirbutions Paid before Highland was removed

Date	A3	A4	A5	A6	Total
11/1/2017	1,068,208	1,434,935	1,220,175	1,499,862	5,223,179
2/1/2018	471,645	898,027	640,095	870,666	2,880,433
5/1/2018	229,888	1,231,081	1,096,471	1,313,207	3,870,646
8/1/2018	-	-	166,472	651,402	817,874
Total	**1,769,741**	**3,564,043**	**3,123,213**	**4,335,136**	**12,792,132**

85. The ratio was approximately $13 million in equity distributions to shareholders versus less than $900,000 in expenses, or 14.4 to 1 distributions to expenses.

86. Since the RIA Defendants have taken over managing the Acis CLOs, the distributions-to-expense ratio has thus fallen from what it used to be, 14–1, to what it is now an anemic 0.25–1.

87. Because of the way these CLOs have been managed, the expenses were distributed proportionately amongst the Acis CLOs, thereby impacting ACIS-6, *pro rata*.

88. Assuming that remains true and given the amount of revenue that Acis is supposed to have earned, which was about $12 million, Acis has taken well over $24 million in revenue through its manipulation of the portfolio and expenses.

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

89. Relevant to this case, from May 2019 through May 2020, the Acis CLOs (Acis 3 through 6) accrued over $22 million in revenue that has been apportioned:

ACTUAL								
DATE	TOTAL AUM	ACTUAL REV	ACTUAL EXP	LEG/ADM	ACTUAL NET	UNSEC DIST	CASH BEG	CASH END
2/1/2019	1,890,604,000	2,172,029	959,039	-	1,212,990		3,824,839	5,037,827
5/1/2019	1,885,797,000	2,532,027	960,950	1,022,062	549,015		5,037,827	5,586,841
8/1/2019	1,861,154,000	4,251,742	745,071	327,111	3,179,560	21,260	5,586,841	8,745,140
11/1/2019	1,738,471,000	4,718,571	1,043,539	4,629,967	(954,935)	2,479,244	8,745,140	5,310,961
2/1/2020	1,600,692,519	3,925,389	1,076,914	-	2,848,475	40,494	5,310,961	8,118,942
5/1/2020	1,372,412,410	1,057,251	649,671	-	407,580		8,118,942	8,526,522
8/1/2020	1,143,864,482	3,305,967	936,538	-	2,369,429	1,500,000	7,809,535	8,678,963
11/1/2020	1,015,929,000	2,321,662	1,778,177	-	543,485		8,678,963	9,222,448
2/1/2021	814,796,995				-		9,222,448	9,222,448
		24,284,638	**8,149,900**	**5,979,140**	**10,155,598**	**4,040,998**		

90. The Acis CLOs had never incurred such profoundly high expenses and fees to Acis. This includes roughly $2.3 million in extra profits to Acis, as well as substantial legal fees incurred by Acis itself (not by the CLOs, and not for the benefit of the CLOs).

91. Acis periodically reported its expenses by using misleading descriptions and failing to come clean about what all the expenses actually are for.

92. For it to all come at the expense of the investors in Acis CLOs is gob-smacking.

93. That the expenses were incurred by the RIAs who are defendants in this case, only after they had secured bankruptcy protections for themselves against redemptions, gives rise to a strong inference that they are not properly allocated as Acis CLO expenses. Rather, they are something else.

94. That Acis has represented these expenses as having been charged on behalf of or for the benefit of the managed Acis CLOs, and then unilaterally collected those expenses under the same pretense, gives rise to a strong inference that the RIA Defendants (as defined herein) knowingly misrepresented the nature and proper allocation of these expenses.

95. That the RIA Defendants have complete control over this information and have not disclosed it, while misrepresenting the nature of the fees and expenses, is a bad-faith manipulation of their duties and rights under the Acis Indentures and the PMAs.

2. Failure to Buy Loans that Satisfy the WAL Threshold

96. Considering the life cycle of a CLO, the Acis CLOs are currently outside the reinvestment period. As such, these CLOs are stuck with the collateral they have at this moment.

97. Normally this may be fine, but such is not the case here. The issue here is that, prior to the close of the reinvestment period, Defendants caused the Acis CLOs to buy and hold collateral that failed the risk parameters delineated in the Acis Indenture and the PMAs.

98. For instance, some loans have maturity dates further out than what is appropriate; others simply lacked the creditworthiness on their own to qualify under the applicable parameters. Defendants' purchase of these loans violated the PMAs, the course of performance, and good industry practices.

99. Equally important, Defendants' purchase of these loans did not maintain or improve the credit quality of the Acis CLOs' portfolios, which violates the terms of the Acis Indenture and the PMAs.

100. The purchase of these loans caused the Acis CLOs to suffer substantial losses.

101. An analysis of these individual trades and purchases, made with U.S. Bank's approval, further underscores U.S. Bank's failure as trustee to adhere to the respective indenture's collateral quality requirements.

102. For example, Acis-6 is required to provide monthly reports, which disclose, among other things, where the CLO remains in compliance with the WAL thresholds required by the

indenture.[6]

103. The WAL threshold for Acis-6 is 4.66.

104. On August 21, 2018, Acis-6 registered a failing WAL of 4.78. According to the indenture's terms, failing the WAL threshold means that the fund cannot purchase any additional collateral unless said purchase improves the WAL of the CLO's portfolio.[7]

105. Further, the portfolio manager is required to use commercially reasonable efforts to effect the sale of any collateral obligation that no longer meets the applicable criteria, including collateral causing the portfolio to fail the WAL threshold.[8]

106. From a practical perspective, this means that (1) the portfolio manager needed to sell all collateral obligations that caused the CLO's portfolio to violate the WAL threshold, and (2) the portfolio manager could only purchase collateral that would effectuate a more favorable WAL.

107. Despite these requirements, the RIA Defendants made multiple purchasers that did not improve the WAL, thereby violating the terms of the relevant indenture.

108. Defendants may well argue that even though these acquisitions did not meet the WAL threshold, they bundled these purchases with loans that did satisfy the WAL threshold.

109. According to their contention, Defendants purport to have met the requisite WAL threshold by packaging all of these loans together to average out to a satisfactory WAL under the indenture's terms.

110. But Defendants' argument is illusory. Defendants bought loans with maturity dates that are more than two years apart, which the Acis Indenture do not allow. Once the less risk-laden

[6] *See* Article 10 Section 10.7 of Indenture.

[7] *See* Article 12 Section 12.2 of Indenture.

[8] *See* Article 12 Section 12.1(g) of the Indenture.

notes are paid off more quickly due to their shorter durations, the Acis CLOs' portfolios become disproportionately weighted with longer-term notes, no longer offset by the healthier notes.

111. The result of this course of conduct taken by Defendants initially projects an impression (albeit false) that a portfolio's WAL threshold is under control, while, in reality, this is simply a mirage, soon to be vanquished by a predictably rapid ascension in the WAL due to the less risky debt being paid off.

112. Pairing these loans of diverging quality circumvents the maintain/improve language engrained in the Acis Indenture's WAL thresholds.

113. Defendants' actions saddle investors with long-dated collateral, escalating duration risk, and increasing debt levels in the CLOs' portfolios, which is particularly problematic because these CLOs should be decreasing in maturity time and deleveraging through the amortization of shorter-term loans.

3. Buying Bad Investments

114. Upon information and belief, Defendants intentionally and purposefully purchased substandard assets.

115. For instance, Defendants bought nineteen loans on a single day, likely in a scheme to circumvent the requisite WAL thresholds.

116. These loans remain in the Acis CLOs' portfolios and, due to a continuing and apparently uncurable default, are currently valued at approximately twenty cents on the dollar—amounting to a roughly $1.5 million loss in value to the Acis CLOs.

117. Defendants should have foreseen, and indeed foresaw, this risk because of the low credit ratings.

118. Had Defendants abided by the requirements of the Acis Indenture and PMAs, not to mention prudent investing standards, these losses incurred by the Acis CLOs could have been avoided.

119. There was no pro-investor justification for how Defendants managed this investment.

4. Failure to Provide Best Execution

120. A third problem with certain of Defendants' loan purchases is that they were often executed on the same day at a time when the market was flying high. Single-day purchases tend to make assets more expensive to buy.

121. These same-day purchases violated Defendants' duties of best execution.

122. Additionally, many of the purchased assets were some of the cheapest on the market and were still overpriced nevertheless.

123. At the time Defendants executed these purchases, loans were scarce, making the market conditions much more suitable for sellers than buyers.

124. The prudent course would have been to remain in cash or identify investment opportunities that were more secure and of shorter duration. Defendants did not do so.

125. Moreover, Defendants caused the Acis CLOs to sell certain collateral prematurely and on the cheap.

126. As a result of Defendants' tactics and actions, the mix of assets constituting the Acis CLOs' assets is well short of the required WARF, and the maturity of the assets in the portfolios of these CLOs has pushed well past the required WAL.

127. Both the Acis Indenture and the PMAs require Acis to seek best execution.[9]

[9] PMA Section 4(a); Indentures Section 12.2.

D. No Accountability Without Judicial Intervention

128. All things considered, where was the adult in the room?

129. The Acis Indenture provides that the Trustee, U.S. Bank, shall hold in trust, for the "benefit and security" of the investors, all "Collateral Obligations" that secure the financial obligations to the investors. However, the Trustee has successfully claimed complete contractual immunity from any responsibility to do anything other than take orders from the investment manager. Hence, Acis, Terry and Brigade are firmly on the hook and cannot blame the Trustee.

130. Relatedly, the Acis Indenture also provides that, for future purchases and sales of collateral obligations, the RIAs shall only consummate transactions that satisfy certain investment criteria.

131. One such criterion for all purchases is that either (A) each requirement or test, as the case may be, of the Concentration Limitations and the Collateral Quality Test will be satisfied, or (B) if any such requirement or test was not satisfied immediately prior to such reinvestment, such requirement or test will be maintained or improved after giving effect to the reinvestment. *See, e.g.*, Indenture 5 § 12.2(a)(iv).

132. The Acis Indenture defines "Collateral Quality Test" as:

> A test satisfied if, as of any date of determination . . . in the aggregate, the Collateral Obligations owned (or, for purposes of *pro forma* calculations in relation to a proposed purchase of a Collateral Obligation, proposed to be owned) by the Issuer satisfy . . . the Maximum Moody's Rating Factor Test . . . [and the] Weighted Average Life Test.

133. These tests are defined, in turn, as follows:

> "Maximum Moody's Rating Factor Test": The test that will be satisfied on any date of determination if the Weighted Average Adjusted Moody's

> Rating Factor[10] of the Collateral Obligations is less than or equal to the lesser of (i) the sum of (A) the number set forth in the column entitled "Maximum Weighted Average Moody's Rating Factor" in the Moody's Asset Quality Matrix, based upon the applicable "row/column combination" chosen by the Portfolio Manager with notice to the Collateral Administrator . . . plus the Excess Recovery Adjustment Amount.
>
> "Weighted Average Life Test": A test that is satisfied if the Aggregate Weighted Average Life[11] on such date of determination is not later than November 18, 2022.

See, e.g., Indenture 6 at 37-38, 64.

134. These provisions of the Acis Indenture seek to maintain the integrity and continued performance of Acis CLOs' assets by requiring certain parties, including the portfolio manager and the trustee, to ensure that the collateral complies with the detailed,

[10] "Weighted Average Adjusted Moody's Rating Factor" means "[a]s of any date of determination, a number equal to the Weighted Average Moody's Rating Factor determined in the following manner: for purposes of this definition, the last paragraph of the definition of "Moody's Default Probability Rating," the second to last paragraph of the definition of "Moody's Rating" and the last paragraph of the definition of "Moody's Derived Rating" will be disregarded, and instead each applicable rating on credit watch by Moody's that is on (a) positive watch will be treated as having been upgraded by one rating subcategory, (b) negative watch will be treated as having been downgraded by two rating subcategories and (c) negative outlook will be treated as having been downgraded by one rating subcategory. *See, e.g.*, Indenture 5 at 64-65.

"Weighted Average Moody's Rating Factor" means "[t]he number (rounded up to the nearest whole number) equal to: (i) the sum of the products of (a) the Principal Balance of each Collateral Obligation (excluding Equity Securities) multiplied by (b) the Moody's Rating Factor of such Collateral Obligation, divided by (ii) the Aggregate Principal Balance of all such Collateral Obligations." *Id*.

[11] "Aggregate Weighted Average Life" means "[w]ith respect to all Collateral Obligations as of any date of determination is a date equal to (A) the actual number of years (…) following such date obtained by (i) *summing* the products obtained by *multiplying* the Weighted Average Life at such time of each Collateral Obligation *by* the Principal Balance at such time of such Collateral Obligation and (ii) *dividing* such sum *by* the Aggregate Principal Balance at such time of all Collateral Obligations *plus* (B) such date of determination. *Id.* at 6.

industry-recognized, bargained-for tests—the exact safeguards on which investors, like NexPoint, relied when investing in the Acis CLOs.

135. Similar to those terms concerning collateral quality, these provisions aim to ensure the rights of any investor under the Acis Indenture, such as NexPoint, are not diluted.

136. As previously set forth, the portfolio manager must ensure that the mix of assets in Acis funds satisfies the collateral quality tests, including the WAL threshold and the Minimum Weighted Average Moody's Recovery Rate Test ("WAM Test"), or maintains or improves any failing collateral quality tests.

137. Defendants failed to satisfy these obligations.

138. For one thing, the assets in the Acis funds failed the WAL threshold. Subsequent transactions have failed to maintain or improve a failing WAL threshold. For example, on several occasions during the relevant, actionable timeframe, Defendants have made multiple same-day purchases and consolidated the weighted average maturity date for these trades.

139. Doing so created the false appearance that a CLO portfolio's WAL threshold had been maintained or improved upon. Absent this consolidation, the same-day purchases could not have maintained or improved the failing WAL thresholds on individual bases.

140. Furthermore, the Portfolio Manager bears the obligation to seek best execution on trades reasonably available to the Acis CLOs. But Defendants greenlit many same-day trades, thereby ignoring its binding obligation under the Acis Indenture to ensure the maintenance or improvement of the collateral quality test as to each and every trade made in respect to the Acis CLOs.

141. Therefore, absent judicial intervention, there is nothing to protect the investors.

CAUSES OF ACTION

142. All causes of action are limited to claims that accrued after the order of confirmation of the Acis Bankruptcy on February 15, 2020, forward.

COUNT ONE
Breach of Fiduciary Duty
All Defendants

143. Plaintiff incorporates the foregoing factual averments as if fully set forth herein.

144. As registered investment advisors, the RIA Defendants are subject to the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 *et seq*. (the "Advisers Act").

145. The Advisers Act establishes an unwaivable fiduciary duty for investment advisers.[12]

146. The RIA Defendants' fiduciary duties are broad and apply to the entire advisory relationship. The core of the fiduciary duty is to always act in the best interest of their investors—the adviser must put the ends of the client before its own ends or the ends of a third party. *See SEC v. Gruss*, 245 F. Supp. 3d 527, 591 (S.D.N.Y. 2017).

147. The essence of these fiduciary duties is manifested in the duties of loyalty, transparency, and utmost care.

148. These duties also signify that the RIA Defendants must follow the terms of any agreements and regulations that apply to the investment vehicles.

[12] *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) ("[Section] 206 establishes 'federal fiduciary standards' to govern the conduct of investment advisers." (citation omitted)); *SEC v. DiBella*, 587 F.3d 553, 568 (2d Cir. 2009) ("The 'legislative history of the Advisers Act leaves no doubt that Congress intended to impose enforceable fiduciary obligations' on investment advisors." (citation and brackets omitted)). *See also* Investment Advisers Act Release No. 3060 (July 28, 2010) ("Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients' interests to its own") (*citing Proxy Voting by Investment Advisers,* Investment Advisers Act Release No. IA-2106 (Jan. 31, 2003)).

149. The fiduciary duties the RIA Defendants owed to Plaintiff are predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisers (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent RIAs from violating disclosure rules. 15 U.S.C. § 80b-4a; *see* 17 C.F.R. § 275.206(4)-7(a).

150. Therefore, RIAs must disclose all aspects relevant to potential conflicts of interest and report their own malfeasance to investors.

151. Specifically, for all conflicts of interest, RIAs must (1) disclose those conflicts to the clients verbally, in writing, on Form ADV,[13] and (2) obtain the client's written consent before proceeding with any transaction that could be deemed double dealing.[14]

152. Where RIAs trade on their own behalf or place their interests above those of the advisee or investors, the Advisers Act holds such RIAs liable to the advisee and its investors for breaching their fiduciary duty.

[13] General Instruction 3 to Part 2 of Form ADV (stating that an adviser's disclosure obligation "requires that [the adviser] provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest [the adviser has] and the business practices in which [the adviser] engage[s], and can give informed consent to such conflicts or practices or reject them")

[14] Investment Advisors Act Release 3060, *supra*; General Instruction 3 to Part 2 of Form ADV ("Under federal and state law, you are a fiduciary and must make full disclosure to your *clients* of all material facts relating to the advisory relationship. As a fiduciary, you also must seek to avoid conflicts of interest with your clients, and, at a minimum, make full disclosure of all material conflicts of interest between you and your *clients* that could affect the advisory relationship. This obligation requires that you provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest you have and the business practices in which you engage, and can give informed consent to such conflicts or practices or reject them."). *See also Robare Grp., Ltd. v. SEC*, 922 F.3d 468, 472 (D.C. Cir. 2019) ("[R]egardless of what Form ADV requires, [investment advisers have] a fiduciary duty to fully and fairly reveal conflicts of interest to their clients.").

153. Section 206 of the Advisers Act prohibits RIAs from employing "any device, scheme, or artifice to defraud any client or prospective client," "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client," or to "engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." 15 U.S.C. § 80b-6(1)–(2), (4).

154. Section 206 of the Advisers Act focuses on the use of the unlawful means—its provisions do not require that the activity be in the offer or sale of any security, or in connection with a purchase or sale with the advisee. They do not require evidence of reliance or materiality.

155. Because Advisers Act duties are the standard of care for investment advisors, under New York law, investment advisors owe fiduciary duties to their clients, and "may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties," since in "these instances, it is policy, not the parties' contract, that gives rise to a duty of care".[15]

156. The RIAs violated their fiduciary duties by breaching the terms of the indenture, by self-dealing, and by converting property of the investors for themselves.

157. Because of the life cycle of a CLO, the Acis CLOs are currently outside the period of reinvestment. Therefore, the CLOs are stuck with the collateral they have.

158. The problem is that prior to the close of the reinvestment period, Defendants have caused the CLOs to buy and hold collateral that would not have qualified for the risk parameters delineated in the PMAs and indentures.

[15] *Sommer v Fed. Signal Corp.*, 79 N.Y.2d 540, 551-552 (1992); *see also Bullmore v Ernst & Young Cayman Islands*, 45 A.D.3d 461, 846 N.Y.S.2d 145 (1st Dept. 2007) (professional investment adviser had fiduciary duty to client in connection with hedge fund collapse notwithstanding whether a contractual duty exists).

159. Certain loans have maturity dates further out than what is necessary or appropriate. Certain loans simply lacked the creditworthiness on their own to qualify. The purchase of these loans violated the PMAs, as well as the course of performance and good industry practices.

160. Equally important, the purchase of these loans violated the requirements in the indentures and the PMAs that any trading should maintain or improve the credit quality of the portfolio.

161. This has caused the Acis CLOs to suffer substantial losses. Several examples are shown here.

a. Chief Power. Throughout the relevant time period, Defendants held the Chief Power loan which bore a very dismal Caa1/B- rating when Defendants initially purchased it. Critically, it had a December 2020 maturity date. The lack of creditworthiness of the loan is evidenced not only by its low credit rating, but also by the fact that it was not refinanced when it could have been in 2018-2019. The loan was then downgraded to Caa2/CCC in the fall of 2019. It was only then that Defendants went on to sell this loan at 51 cents on the dollar within a year, locking in $4.7mm of realized losses to the Acis CLOs. The manager had purchased this loan with a December 2020 (1+ year) maturity date on the same day Defendants bought multiple loans with 2025 (6+ year) and 2024 (5+ year) maturities. This is important because the 2025 and 2024 loans do not maintain or improve failing WAL Tests in existence at the time of purchase. However, the addition of Chief Power was plainly to generate the appearance of a *blended* WAL that did maintain or improve the failing WAL Test. This type of chicanery is not allowed nor is it in the spirit of the CLOs' indentures,

and ended up directly leading to almost $5 million in losses to the Acis CLOs. There was no pro-investor justification for how Defendants managed this investment;

b. Glass Mountain Pipeline. Defendants purchased $2 million of this loan in April 2019 on a single day (April 30, 2019). It had B3/B ratings at the time of purchase, indicating heightened credit risk, and also had a December 2024 maturity date, which was 5.5+ years from when it was purchased. The WAL Tests for the CLOs that bought this were failing at this time, meaning a loan purchased needed to maintain or improve the failing WAL Tests, which were all standing at 4.0 years or shorter. This was a purchase that, in addition to heightened credit risk and increasing the average maturity date of the portfolios, also violated the CLOs' indentures' credit quality requirements. Similar to other situations, Defendants bought nineteen loans on a single day, likely in a scheme to circumvent the WAL Test restrictions. The loan is currently still held in the portfolios and is quoted in the low 20s due to a continuing and apparently uncurable default, which is a $1.5 million loss to the Acis CLOs. Defendants should have known and foreseen this risk because of the low credit ratings. Had Defendants abided by the indenture and PMA requirements, as well as prudent investing standards, these losses to the Acis CLOs would have been avoided. There was no pro-investor justification for how Defendants managed this investment;

c. KCA Deutag. Defendants purchased this loan with a Caa1/CCC+ rating at the time of its purchase in April through May 2019. There was no

justification to purchase loans with a Caa/CCC rating as the implied credit quality is far too risky for a levered CLO structure. The purchase price averaged 85 cents on the dollar (i.e., of the face value of the loan), which also implies significant credit risk. Defendants ended up selling this loan six months later on November 18, 2019, at 65 cents on the dollar, locking in $1.8 million in losses to the Acis CLOs. The low credit rating and the fact that the loan had a long maturity date would have warned the Defendants that the loan lacked the credit quality and would not maintain or improve the credit quality of the portfolio; in fact, it would have certainly dragged the credit quality down. There was no pro-investor justification for how Defendants managed this investment;

d. Libbey Glass. This was being held by Acis for no apparent reason. Its B2/B credit was weak, which is why it had not refinanced/extended already during a very strong 2018-2019 market. Defendants inexplicably held on to the loan which was downgraded to B3 in November 2019 and again to Caa2/CCC in March 2020. The issuer corporation filed for bankruptcy, and the loan was restructured into reorganized equity, essentially wiping out all the value from the lenders. Defendants' decision to hold the loan throughout the entire downward process locked in $12.7 million of tangible losses to the Acis CLOs. There was no pro-investor justification for how Defendants managed this investment;

e. Carestream Health. This loan had B3/B- ratings. The credit was very weak, which was reflected by the ratings, and is why it had not

refinanced/extended already during a very strong 2018-2019 market. Following an S&P downgrade from B- to CCC+ in February 2020 (plus, it remained on Creditwatch Negative), Defendants sold this loan across all portfolios on the same day (March 3, 2020) at 75 cents on the dollar, locking in $4.8 million of realized losses to the Acis CLOs.

f. Envision Healthcare. This loan had B2/B+ ratings at the time of purchase in April 2019, because the loan had been issued with a maturity date of October 2025. The WAL of this loan was 6.5 years. The WAL Tests for the CLOs that bought this were failing at this time, meaning a loan purchased needed to main or improve the failing WAL Tests, which were all standing at less than 4.0 years or shorter. This was a purchase that clearly violated the CLOs' indentures. The loan would go on to be downgraded to its current Caa2/CCC ratings. The loan is currently still held in the Acis CLO portfolios at a $1.5 million loss thus far;

g. Doncasters. This loan bore a B3/B- rating which means it was unlikely to be paid off or refinanced. While Defendants continued to hold the loan (which they should never have bought), Caa1/CCC- and the manager sold the loan around July 1, 2020, at an average price of 80.51, locking in $1.2 million of realized losses to the Acis CLOs in less than a year.

h. Lumileds (Bright Bidco). This loan is being held in violation the CLOs' indentures. As of February 16, 2019, the loan had just recently been issued, carried B1/B ratings, and has a June 2024 maturity date, which was nearly six years from when it was bought in September 2018. The WAL Tests for

the CLOs that bought this were failing at this time, meaning it failed to maintain or improve the failing WAL Tests, which were all standing at four years or shorter. In September 2019, the loan was downgraded to B3/CCC+, and in November 2019, the loan's ratings were downgraded again to Caa1/CCC+. The manager has not sold any of this loan to date. Today, the loan trades at 76-77, which is currently $2.2 million in losses to the Acis CLOs;

i. McGraw-Hill. This loan had B2/B rating and was downgraded by Moody's to B3 in May 2019 and then again to Caa2 in August 2020. S&P downgraded the rating to B- in May 2020 and to CCC+ in September 2020. This was a loan with a very weak credit profile, but seemingly one that the manager believed in, as this was one of the largest positions put on by the manager. However, after purchasing over $36 million across four CLOs between August 2018 and December 2019, the manager decided to sell all of it on a single day--September 30, 2020—at a price of $82.75, foregoing any chance of a par recovery. This loan was then fully paid off at 100 cents on the dollar roughly three months later in January 2021. The sell at $82.75 cost the four CLOs a total of $5.9 million compared to the full paydown the CLOs would have received in January 2021 had the loans not been sold;

j. GIP III Stetson. The GIP Stetson loan bore low credit ratings of Ba3/B+ and, more critically, was a loan that carried a 6+ year maturity (July 2025) that made purchasing it a violation of the indentures. The WAL Test of this loan did not maintain or improve the failing WAL Tests. By purchasing this

loan—in addition to all the others herein—the manager was engaging in a scheme or artifice to deceive by manipulating the metrics of the indenture in bad faith. The manager was buying risky loans that never should have been included in the collateral pool. The loan was subsequently downgraded to B1/B-, and the manager sold this loan at 66 cents on the dollar between May 2020 and August 2020, locking in $1.5 million in damages. It is also curious as to why the manager would then sell this loan down 34 points; not long after the loan was sold, the trading levels moved up materially and is now trading at 96 cents on the dollar.

k. Boardriders. Purchased in March 2019, the loan had B3/B- ratings at the time of purchase, indicating heightened credit risk, and it also had an April 2024 maturity date, which was 5+ years from when it was purchased. The WAL Tests for the CLOs that bought this were failing at this time, meaning a loan purchased needed to maintain or improve the failing WAL Tests, which were all standing at 4.0 years or shorter. This was a purchase that, in addition to heightened credit risk, also violated the CLOs' indentures. The loan is currently still held in the portfolios, has been downgraded to B3/CCC, and trades in the low-mid 90s--several points lower than where it was purchased--and reflects a loss of $442,193;

l. Premiere Brands (Nine West). This loan had B3/B- ratings at the time of purchase, including a Caa1 tranche rating on the loan, indicating heightened credit risk, and also had a March 2024 maturity date, which almost five years from when it was bought in April 2019. The WAL Tests for Acis 6,

> the CLO that bought this, was failing at this time, meaning a loan purchased needed to maintain or improve the failing WAL Tests, stood at 4.15 years. This was a purchase that, in addition to heightened credit risk, also violated the CLOs' indentures. Similar to other situations, the manager bought sixteen items on a single day, which is a violation of the indenture and of best execution conventions. The loan has subsequently been downgraded to Caa2/CCC, is currently still held in the portfolios and is quoted in the mid-high 60s, which is more than a $600,000 unrealized loss.

This chart summarizes an estimate of the losses:

Issuer	Commitment Bought	Loss on Investment
Libbey Glass	12,750,000	$ (12,660,000)
Chief Power	10,894,048	(4,724,826)
Lumileds Holding	9,732,632	(2,181,083)
KCA Deutag UK Finance PL	8,992,443	(1,781,329)
Glass Mountain Pipeline	1,994,949	(1,548,280)
Envision Healthcare	13,994,987	(1,470,094)
Doncasters	9,730,000	(1,190,979)
Premiere Brands	2,000,000	(635,000)
Boardriders	6,569,202	(448,763)
Total	**76,658,262**	**$ (26,640,333)**

162. Another problem with these purchases is that they were often executed on the same day (purchasing in a single day tends to make an asset more expensive to buy) and were executed at a time when the market was flying high. This violated the best execution duties of the Defendants.[16]

[16] *See* PMA Section 4(a); Indentures Section 12.2.

163. Additionally, many of the purchased "bad" assets were some of the cheapest assets on the market—but they were actually still overpriced. The market at the time was a seller's market—loans were scarce.

164. The most prudent course would have been to remain in cash or find far more secure short-term investments.

165. Defendants have furthermore caused the CLOs to sell certain collateral cheaply and prematurely. In other words, the RIA Defendants took over advising and managing the Acis CLOs with several credit-worthy assets, or they themselves luckily bought several credit-worthy assets.

166. The problem is that they then sold those assets, inexplicably, at a time when they knew they could not replace them with equal or improved assets.

167. Given that the Defendants had no intention of redeeming the CLOs (allowing investors to take their money out) or resetting them (raising new debt and opening a new investment period), the investors of the CLOs would have been best served had these "good" assets been allowed to simply mature.

168. These are illustrated here:

Issuer	Commitment Sold	Lost Value
McGraw-Hill Global Education	$34,288,241	($ 5,914,722)
Carestream Health	$20,644,508	(4,799,848)
Advantage Sales & Marketing 1L	$27,038,364	(3,622,316)
Advantage Sales & Marketing 2L	$10,688,828	(2,820,378)
Mohegan Tribal Gaming	$12,153,419	(1,830,609)
GIP III STETSON I	$5,169,653	(1,518,878)
Advantage Sales & Marketing 1L	$6,510,157	(890,963)
Party City	$8,826,376	(822,638)
Total	$125,319,547	($22,220,350)

169. There is no plausible pro-investor basis for such actions.

170. A more cynical person would be left to wonder who the purchasers of these assets were, and whether they were entities or persons related to Terry, or in which he had a hidden or surreptitious or beneficial interest.

171. These assets were sold well after the start of COVID—in late 2020. And so they were sold *after* they had hit their "COVID lows"—but the market had already shown it was roaring back in the last quarter of 2020.

172. The above assets were also sold on or about the same day—again, a breach of best execution practices.

173. The mix of assets, because of these knowingly errant purchases and sales, falls well below the acceptable, reasonable WARF, and pushed maturity of the portfolio out past any acceptable, reasonable WAL.

174. As shown, the RIAs sold qualified assets early without justification and without being able to replace them with the same or better quality assets; instead, they bought cheaper assets—and more of them, doing so using bundling, same day purchasing, and other deceptive means to mask the low quality and true life of the loans in violation of their best execution duties, and in violation of the collateral quality tests required by the Acis Indenture.

175. The purpose of these transactions is obvious: purchasing more bad assets cheaper to inflate the notional value of Assets Under Management, thus inflating the fees the RIAs could charge, and extending their life as RIAs for this mountain of money. This operates as an artifice to deceive and/or defraud the investors.

176. As if that weren't enough, the RIA Defendants have engaged in a practice or course of business consisting of passing off expenses, without disclosure or accountability, that were incurred by Acis—the portfolio manager—as though they were the expenses of the CLOs—

the *advisees.* By doing so, the RIA Defendants affirmatively misrepresented the character and nature of those expenses and subsequently assessed their managed entities their pro rata share.

177. The fiduciary duty that the RIA Defendants owed to investors like Plaintiff is predicated on trust and confidence and to not commit corporate waste.[17]

178. The RIA Defendants have breached their fiduciary duties by committing corporate waste in two primary forms: (1) by incurring unnecessary expenses or improperly imposing expenses on the Acis CLOs without justification, and (2) by collecting fees based upon a knowingly inflated notional asset value.

179. The RIA Defendants have breached their fiduciary duties of transparency by failing to fulsomely justify and document their investor-related activities. Failing to do so is a breach of the duty of loyalty because it is plainly a means to conceal the true extent of the malfeasance and damage done.

180. The Advisers Act declares any contract void that is made in violation of the Advisers Act, or the performance of which involves the violation of, or the continuance of any relationship or practice in violation of the Advisers Act, or any rule, regulation, or order issued thereunder.

181. Therefore, there are no contractual defenses or justifications for the violations of the Advisers Act's duties.

182. The agreements between Acis and any third party in any transaction in violation of the Advisers Act is also void, and the RIA Defendants' rights under the indentures and PMAs are void due to the violations of the Advisers Act.

[17] *See Cap. Gains Rsch.*, 375 U.S. at 191–92 (stating that the Advisers Act was meant to "eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser — consciously or unconsciously — to render advise which was not disinterested").

183. The RIA Defendants have further aided and abetted the breaches by their co-defendants, and/or conspired with their Co-Defendants, making them liable as principals for breach of fiduciary duty.

184. The RIA Defendants are thus liable for damages, punitive damages, and all other relief to which Plaintiff is justly entitled. Plaintiff seeks all legal and equitable relief to which Plaintiff is justly entitled including but limited to restitution and disgorgement of all funds and moneys paid in violation of the Advisers Act after the effective date of the ACIS bankruptcy final plan order.

185. To the extent the RIA Defendants must be served via derivative action, Plaintiff respectfully pleads this claim in the alternative as a derivative action on behalf of ACIS 6. Plaintiff alleges that any demand would have been futile because ACIS's control person, Mr. Terry, would not have sued himself, the sub-advisor, or any other person with whom he is plainly aligned. Also, in the alternative, Plaintiff pleads that Terry and Acis should be liable for breach of fiduciary duty (for, *inter alia*, self-dealing) for not bringing the claims in this case in the first instance.

COUNT TWO
Breach of Contract
Against Acis

186. Plaintiff incorporates the foregoing factual averments as if set fully set forth herein.

187. Section 11(a)(i) of the PMAs expressly holds Acis liable for any decrease in the value of the CLOs that was accomplished by bad faith, willful misconduct, gross negligence, or reckless disregard in the performance of its obligations.

188. The PMAs further give Acis the discretion to allocate and manage the CLOs' assets and to incur expenses on behalf of the CLOs for services that benefit the CLOs.

189. The Acis Indenture further requires that Acis manage the CLO Assets in a manner that maintains or improves the credit quality of the CLOs' portfolios, subject to the collateral quality tests defined above.

190. By contract, New York law governs the PMAs and Acis Indenture; under New York law, every contract contains an implied duty of good faith and fair dealing. *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 773 N.E.2d 496, 500 (N.Y. 2002).

191. Acis has breached these agreements and caused the CLOs to incur expenses that, upon information and belief, go considerably beyond what is contractually permissible for the Acis CLOs.

192. Nothing in the agreements permits Acis to collect fees it did not properly earn.

193. Acis has breached these agreements and manipulated the CLOs' assets in a way that prolongs the CLOs and maximizes fees owed to Acis—all at the expense of NexPoint and other investors in the Acis CLOs.

194. These breaches of contract caused NexPoint to incur damages.

195. NexPoint alleges and avers that it may bring this breach of contract claim directly to the extent it and Acis are parties to the indentures, and to the extent that the indentures incorporate the PMAs and the duties therein.

196. If NexPoint is required to bring this claim derivatively, it hereby does so and avers that any pre-suit demand would have been futile because asking Acis-6 to bring suit when it is controlled by the Defendants would have been futile. Plaintiff alleges that any demand would have been futile because ACIS's control-person, Mr. Terry, would not have sued himself, the sub-adviser and the Indenture Trustee, or any other person with whom he is plainly aligned.

197. NexPoint thus seeks damages, attorneys' fees, restitution, disgorgement, and any

and all other remedies to which it is justly entitled.

COUNT FOUR
Negligence/Gross Negligence
Against All Defendants

198. Plaintiff incorporates the foregoing factual averments as if set fully set forth herein.

199. To the extent any Defendant would be liable for any of the foregoing causes of action prior to their lack of sufficient intent or willful actions, Plaintiff pleads in the alternative that such Defendant's acts or omissions were negligent.

200. Defendants owed NexPoint a duty of care in managing the investments of the CLOs and in discharging their duties under the Advisers Act, the Acis Indenture, and the PMAs.

201. Defendants' acts and omissions in violation of the duties outlined herein have resulted in substantial losses to NexPoint, totaling $8,000,000 or more.

202. Defendants' conduct was knowing and willful, and done in disregard of known and established safeguards implemented and created in the industry in order to avoid well-known, foreseeable risks.

203. Defendants' acts and omissions were taken in reckless disregard of these known risks.

204. Defendants are fiduciaries and are thus liable for negligence and gross negligence.

205. If NexPoint is required to bring this claim derivatively, it hereby does so and avers that any pre-suit demand would have been futile because asking Acis 6 to bring suit when it is controlled by the Defendants would have been futile. Plaintiff alleges that any demand would have been futile because ACIS's control person, Mr. Terry, would not have sued himself, the sub-adviser and the Indenture Trustee, or any other person with whom he is plainly aligned.

206. Plaintiff is thus entitled to damages, punitive damages, attorneys' fees, disgorgement, and costs as the law provides and to which it is justly entitled.

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

COUNT FIVE
Conversion
Against Acis and Terry

207. Plaintiff incorporates the foregoing factual averments as if fully set forth herein.

208. The Acis CLOs are obligated to pay specific and identifiable administrative expenses in addition to other costs and expenses. The payment of these expenses is pulled from a reserve of specific and identifiable equity, which includes funds belonging to NexPoint (to the extent it is an equity holder under the Acis CLOs).

209. As both a noteholder and equity holder, NexPoint had ownership, and therefore a right, to the property used to pay the Acis CLOs' administrative expenses and costs before the property's conversion.

210. In allowing the payment of inexplicably high expenses (near twenty times their historical amount), Terry, upon information and belief, wrongfully and improperly reimbursed Acis, and potentially himself, using Plaintiff's property designated for the payment of the Acis CLOs' administrative expenses and costs.

211. Upon information and belief, Terry wrongfully and improperly reimbursed Acis and potentially himself by using Plaintiff's property designated for the payment of the Acis CLOs' administrative expenses and costs, and by allowing the payment of uncharacteristically high expenses upwards near 20 times their historical amount.

212. Upon information and belief, Terry and Acis exercised a wrongful and unauthorized dominion over NexPoint's property designated for the payment of the Acis CLOs' administrative expenses and costs, to the alteration of its condition or to the exclusion of Plaintiff's rights.

213. An action for the conversion of using Plaintiff's property designated for the

payment of the Acis CLOs' administrative expenses and costs is based on this conduct. The property at issue is a specific, identifiable fund that has an obligation to be returned or otherwise treated in a particular manner.

COUNT SIX
Unjust Enrichment/Assumpsit/Money had and Received
All Defendants

214. Plaintiff incorporates the foregoing factual averments as if fully set forth herein.

215. Plaintiff pleads in the alternative that the forgoing actions and omissions are wrongful, and that Plaintiff is entitled to disgorge the ill-gotten gains from Defendants under the theory of unjust enrichment, assumpsit or money had and received.

216. If NexPoint is required to bring this claim derivatively, it hereby does so and avers that any pre-suit demand would have been futile because asking Acis-6 to bring suit when it is controlled by the Defendants would have been futile. Plaintiff alleges that any demand would have been futile because ACIS's control person, Mr. Terry, would not have sued himself, the sub-advisor and the Indenture Trustee, or any other person with whom he is plainly aligned.

REQUEST TO PIERCE ACIS CAPITAL MANAGEMENT'S CORPORATE VEIL

217. Plaintiff hereby alleges and incorporates the preceding allegations as if fully set forth herein.

218. Terry has exercised complete dominion over Acis.

219. As described herein, Terry used such control to commit fraud or wrongdoing that injured NexPoint. Terry abused his role within Acis to amass unprecedented expenses of the Acis CLOs, which, among other wrongs, amounted to twenty times the historical expense rate.

220. These expenses and Acis's refusal to provide the accounting requested by certain noteholders under the Acis Indenture loudly imply impropriety. Further, the foregoing conduct

raises an inference that expenses incurred under the Acis CLOs have been and are being improperly reimbursed.

221. The circumstances described herein warrant the disregard of Acis's corporate form, particularly so because courts in this county will disregard the corporate form when necessary to prevent fraud or to achieve equity. *See, e.g.*, *LAKAH v. UBS AG*, No. 07-CV-2799, 2017 U.S. Dist. LEXIS 229131, at *255–59 (S.D.N.Y. 2017).

222. Plaintiff respectfully requests that the Court pierce the corporate veil of Acis as to render Acis and Terry jointly and severally liable for the wrongful conduct described herein and to the extent that such conduct would otherwise be attributable to Acis alone.

CONDITIONS PRECEDENT

223. Plaintiff hereby pleads that all conditions precedent have occurred or been performed.

224. To the extent any claim herein is more properly characterized as a derivative claim, Plaintiff submits that any condition precedent to such claim has been satisfied, and that any pre-suit demand would have been futile because Defendants control ACIS-6, and the Trustee who is empowered to bring suit failed to do so despite numerous written requests.

DEMAND FOR ATTORNEYS' FEES

225. Pursuant to Section 5.15 of the Acis Indenture, Plaintiff hereby makes a demand for the attorneys' fees and court costs it has sustained in bringing this action.

PRAYER FOR RELIEF

226. All requested relief is hereby expressly intended to be predicated solely on the alleged acts and omission accruing after the effective date of the final Bankruptcy Order in the Acis Bankruptcy.

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

227. Plaintiff respectfully requests that judgment be entered in its favor and against Defendants Acis, Terry, and Brigade as follows:

A. Damages in an amount to be determined at trial;

B. Punitive damages in an amount to be determined at trial;

C. Disgorgement of wrongfully paid fees and expenses and restitution thereof in an amount to be determined at trial;

D. Disgorgement of any and all ill-gotten gains in an amount to be determined at trial;

E. Attorneys' fees and costs;

F. Constructive trust, injunctive relief, and any other equitable relief necessary to prevent further injury;

G. All other legal and equitable relief to which Plaintiff is justly entitled.

Dated: October 3, 2022

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
New York Bar No. 4339057
2200 Ross Avenue – Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: mas@sbaitilaw.com

Counsel for Plaintiff

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

NEXPOINT DIVERSIFIED REAL ESTATE TRUST,

Plaintiff,

Index No. _____

- against -

SUMMONS

ACIS CAPITAL MANAGEMENT, L.P., JOSHUA N. TERRY, and BRIGADE CAPITAL MANAGEMENT, LP

Defendants.

----------X

To the Defendant:

Acis Capital Management, L.P., Through Its Registered Agent:
Capitol Services, Inc.
1675 S. State Street, Suite B
Dover, DE 19901

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is New York County, New York, as it is the county of the primary place of business for one defendant within the State, the conduct giving rise to the claims herein occurred in whole or in part in New York, and the governing documents to which Defendant is bound requires that Defendant agree to and submit to the jurisdiction of New York.

Dated: October 4, 2022

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti
New York Bar No. 4339057
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
E: mas@sbaitilaw.com

Attorneys for Plaintiff

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

NEXPOINT DIVERSIFIED REAL ESTATE TRUST,

Plaintiff,

Index No. _____

- against -

SUMMONS

ACIS CAPITAL MANAGEMENT, L.P., JOSHUA N. TERRY, and BRIGADE CAPITAL MANAGEMENT, LP

Defendants.

----------X

To the Defendant:

Brigade Capital Management, LP, Through Its Registered Agent:
Donald E. Morgan, III
399 Park Avenue, 16th Floor
New York, NY 10022

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is New York County, New York, as it is the county of the primary place of business for one defendant within the State, the conduct giving rise to the claims herein occurred in whole or in part in New York, and the governing documents to which Defendant is bound requires that Defendant agree to and submit to the jurisdiction of New York.

Dated: October 4, 2022

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti
New York Bar No. 4339057
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
E: mas@sbaitilaw.com

Attorneys for Plaintiff

FILED: NEW YORK COUNTY CLERK 10/03/2022 05:11 PM INDEX NO. 653654/2022
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 10/04/2022

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

NEXPOINT DIVERSIFIED REAL ESTATE TRUST,

Plaintiff,

Index No. _____

- against -

SUMMONS

ACIS CAPITAL MANAGEMENT, L.P., JOSHUA N. TERRY, and BRIGADE CAPITAL MANAGEMENT, LP

Defendants.

----------X

To the Defendant:

Joshua N. Terry
3509 Princeton Avenue
Dallas, TX 75205

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is New York County, New York, as it is the county of the primary place of business for one defendant within the State, the conduct giving rise to the claims herein occurred in whole or in part in New York, and the governing documents to which Defendant is bound requires that Defendant agree to and submit to the jurisdiction of New York.

Dated: October 4, 2022

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti
New York Bar No. 4339057
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
E: mas@sbaitilaw.com

Attorneys for Plaintiff

EXHIBIT 77

Ogier (Guernsey) LLP
Advocate Alex Horsbrugh-Porter
17 March 2023

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

BETWEEN:

CLO HOLDCO, LTD

Applicant

-and-

HIGHLAND CLO FUNDING, LTD

Respondent

APPLICATION

CLO HoldCo, Ltd of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands and whose address for service is at Ogier (Guernsey) LLP, Redwood House, St Julian's Avenue, St Peter Port, Guernsey, GY1 1WA

APPLIES TO THE COURT

PURSUANT TO Sections 349 and 350 of the Companies (Guernsey) Law 2008 (the **Companies Law**) and the inherent jurisdiction of the Court

AND IN THE CIRCUMSTANCES more particularly described in the First Affidavit of Paul Richard Murphy **AND AS FOLLOWS:**

1 The Applicant is a limited company incorporated under the laws of the Cayman Islands with registration number 249232, its registered office being situated at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands. This application is brought by the Applicant in its capacity as a shareholder in the Respondent.

2 The Respondent is a limited company incorporated under the laws of Guernsey with registration number 60120, its registered office being situated at 1st Floor, Royal Chambers St. Julian's Avenue St. Peter Port Guernsey GY1 3JX.

3 Respondent has issued 153,139,231 ordinary shares. As shown, Applicant owns 49.015% of shares outstanding at the date of this Application. At the date of this Application the 153,139,231 shares in issue are fully paid up.

4 The current shareholding of the Respondent is as follows:-

(a) The Applicant is the holder of 49.015% of the issued share capital in the Company (70,314,387.44 shares);

(b) HCMLP Investments, LLC (**HCMLP**) is the holder of 49.985% of the issued share capital in the Company;

(c) Highland Capital Management, L.P. (**HCM**) is the holder of 0.627% of the issued share capital in the Company; and

(d) The remaining shareholding in the Company of 0.373% is held by four individuals, namely Lee Blackwell Parker III, Hunter Covitz, Jon Poglitsch, and Neil Desai

(collectively the **Shareholders**).

5 HCM and its affiliate, HCMLP, are the collective majority shareholders of the Company (the **HCM Shareholders**). The Applicant has informed the HCM Shareholders that they are not necessary parties to this Application.

6 HCM is a limited partnership incorporated under the laws of Delaware with registration number 2770270, its registered office being situated at 100 Crescent Court, Suite 1850, Dallas, Texas, United States 75201. HCMLP is a limited liability company incorporated under the laws of Delaware with registration number 5749764, its registered office being situated at 100 Crescent Court, Suite 1850, Dallas, Texas, United States 75201.

7 The Respondent has been formally notified of the filing of this Application and will be notified of the date, time and place of the hearing of the Application in accordance with section 349(4) of the Companies Law.

8 The Application arises out of the management of the Respondent in a manner which has caused ongoing unfair prejudice to the Applicant in its capacity as minority shareholder in the Respondent. The unfair prejudice complained of by the Applicant as set out in the affidavit in support of this Application is mainly predicated upon the Respondent's conduct in aligning its interests with the wider commercial interests of the HCM Shareholders (as the majority shareholder) to the detriment of the Applicant.

9 The purpose of the Application is to mitigate any further harm being caused to the Applicant's interests as shareholder by securing for the Applicant a direct interest in the underlying assets of the Respondent in proportion to its shareholding (through the Applicant Exit Proposals as defined and contained within the First Affidavit). The Applicant has considered various options to achieve a mutual separation between it and the Respondent, and the relief sought in the Application is the most equitable solution to the unfair prejudice complained of.

10 Alternatively, as section 350(2)(b) of the Companies (Guernsey) Law, 2008 provides the Royal Court to "*require the company – . . . . . (ii) to do any act which the applicant has complained it has omitted to do*," if the Court is not disposed to approve the Applicants Exit Proposals, the Applicant seeks as alternative relief provided for in Section 350(2)(c) - that the Court "*authorise civil proceedings to be brought in the name and on behalf of the*

company by such persons and on such terms as the Court may direct" such that Applicant can bring an action against US Bank for recovery of the "Redemption Proceeds" as defined in the First Affidavit. As an additional alternative relief (if the Court does not approve the Applicant's Exit Proposals), the Applicant seeks relief under Section 350(2)(b)(ii), that the Court "*require the company (ii) to do any act which the applicant has complained it has omitted to do*" by ordering the Company to make full distributions to shareholders of unencumbered cash in an amount reflective of the Company's wind down status and absence of investment activities.

THE APPLICANTS THEREFORE PRAY AS FOLLOWS:

1. That the Court make an order that:

    a. The Respondent be ordered to undertake a transaction pursuant to section 350(2)(d) of the Companies Law pursuant to which:

        i. the Applicant transfers to the Respondent its current shareholding held in the Respondent, in accordance with the Applicant Exit Proposals;

        ii. as consideration for such shareholding, the Respondent transfers to the Applicant the full legal and beneficial title of all of the assets held by the Respondent in proportion to the Applicant's pro rata 49.015% equity share in the Respondent; and/ or

    b. Such order as the Court thinks fit for giving relief in respect of the matters complained of, including without limitation the alternative relief set forth above.

This 6th day of March 2023

Alex Horsbrugh-Porter

.....

A Horsbrugh-Porter
Advocate for the Applicant

Royal Court of Guernsey

SIGNIFICATION

to

HIGHLAND CLO FUNDING, LTD

of 1st Floor
Royal Chambers
St. Julian's Avenue
St. Peter Port
Guernsey
GY1 3JX

The last date for service of this Signification is

10 March 2023

Issued from the Office of
Ogier
Advocates
Redwood House, St Julian's Avenue, St Peter Port,
Guernsey, GY1 1WA

.....
H.M. Sergeant

Sergeant

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

BETWEEN:

CLO HOLDCO, LTD

Applicant

and

HIGHLAND CLO FUNDING, LTD

Respondent

AT THE INSTANCE of **CLO HOLDCO, LTD** (**Applicant**) of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands and whose address for service is at Ogier (Guernsey) LLP, Redwood House, St Julian's Avenue, St Peter Port, Guernsey, GY1 1WA

HEREBY NOTIFIES

HIGHLAND CLO FUNDING, LTD whose registered office is at 1st Floor, Royal Chambers, St. Julian's Avenue, St. Peter Port, Guernsey, GY1 3JX that an application in the form attached has been made to the Royal Court, returnable at 10h15am (or as soon as possible thereafter) on 17 March 2023.

Alex Horsbrugh-Porter

.....

Advocate Alex Horsbrugh-Porter
Advocate for the Applicant

Dated: 06 March 2023

Sworn by: PR Murphy
For: Applicant
Number: First
Exhibit: PRM1
Date sworn: 7 MARCH 2023

Ogier (Guernsey) LLP
Advocate Alex Horsbrugh-Porter

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

IN THE MATTER OF PART XIX OF THE COMPANIES (GUERNSEY) LAW, 2008

BETWEEN:

CLO HOLDCO, LTD

Applicant

and

HIGHLAND CLO FUNDING, LTD

Respondent

FIRST AFFIDAVIT OF PAUL RICHARD MURPHY IN SUPPORT OF UNFAIR PREJUDICE APPLICATION

I, Paul Richard Murphy, of 67 Fort Street, George Town, Grand Cayman, Cayman Islands ky1-1007, having been duly sworn, being over 18 years of age, having personal knowledge of the facts sworn herein and being competent to testify as a witness, hereby say as follows:

Introduction

1 The Applicant, CLO HoldCo, Ltd, is a limited company incorporated under the laws of the Cayman Islands with registration number 249232 its registered office being situated at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands. This application is brought by the Applicant in its capacity as a shareholder in the Respondent.

2 I hold the position of Director in the Applicant and I am duly authorised by the Applicant to swear to this affidavit in support of an application by the Applicant pursuant to sections 349

and 350 of the Companies (Guernsey) Law 2008 (as amended) (the **Companies Law**) (the **Application**).

3 The Respondent, Highland CLO Funding, Ltd (the **Company**) is a limited company incorporated under the laws of Guernsey with registration number 60120, its registered office being situated at 1st Floor, Royal Chambers St. Julian's Avenue St. Peter Port Guernsey GY1 3JX. The Company's stated investment objective is to provide its shareholders with stable and growing income returns and to grow the capital value of the investment portfolio through opportunistic exposure to senior secured loans and collateralized loan obligations (**CLOs**) on both a direct and indirect basis. The Company is beyond its investment period and currently in wind down, involving the process of liquidating its investment portfolio with a view to a complete return of capital to shareholders.

4 Highland Capital Management, L.P. (**HCM**) is a limited partnership incorporated under the laws of Delaware with registration number 2770270, its registered office being situated at 100 Crescent Court, Suite 1850, Dallas, Texas, United States 75201, and holds 0.627% of the issued share capital in the Company.

5 HCMLP Investments, LLC (**HCMLP Investments**) is a limited liability company incorporated under the laws of Delaware with registration number 5749764, its registered office being situated at 100 Crescent Court, Suite 1850, Dallas, Texas, United States 75201. HCMLP Investments is a solely owned subsidiary of HCM, having been created to hold 49.985% of the issued share capital in the Company. HCM and HCMLP Investments are hereinafter defined as the HCM Shareholders. The Application is brought against the Company, though the HCM Shareholders have been given notice of the filing of this Application and of their right to seek to be parties to the Application, or alternatively to advise if they wish to present evidence and be heard in the hearings on and concerning the Application, and/or in accordance with Rule 37 (1)(b)(ii) of the The Royal Court Civil Rules, 2007.

6 On October 16, 2019, HCM filed for bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code in the Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court (the **Bankruptcy Court**). Within the bankruptcy proceedings the Bankruptcy Court entered an order (the **Confirmation Order**) confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the **Plan**), which include a gatekeeper order (the **Gatekeeper**) preventing certain parties, including Applicant, from commencing or pursuing litigation against HCM, its subsidiaries, and other parties (**Protected Parties**) without first obtaining leave of the Bankruptcy Court.

7 On 9 September 2022, CLO HoldCo filed a motion in the Bankruptcy Court (the **Bankruptcy Motion**) seeking a ruling from the Bankruptcy Court that the Company was not a Protected Party and not entitled to protection under the Gatekeeper. In connection with the Bankruptcy Motion, CLO HoldCo provided the HCM shareholders with a copy of the Application and Affidavit and disclosed that the HCM Shareholders were not necessary parties to this action.

8 On 25 October 2022, the Bankruptcy Court entered an order (the **Bankruptcy Order**) confirming that the Company is not a Protected Party but making no ruling as to whether

delivering notice of this proceeding to the HCM Shareholders violated the Gatekeeper. The Bankruptcy Order also provides that the HCM Shareholders cannot be added as defendants in this action without leave of the Bankruptcy Court.

9 True and accurate copies of the Bankruptcy Order, the Confirmation Order, as may be amended, and the Plan, as may be amended, are at pages **29 to 246**.

10 I make this affidavit from facts and matters which I believe to be true and where matters are not within my knowledge, I have set out the source of that information. There is now produced and shown to me marked "**PRM1**", a paginated bundle of true copy documents to which I shall refer in this affidavit. References to page numbers are to page numbers of that exhibit.

11 The Application arises out of the management of the Company by its directors (the **Directors**) which has caused unfair prejudice to the Applicant in its capacity as a minority shareholder in the Company. The unfair prejudice complained of by the Applicant is mainly predicated upon: (i) the inexplicable conduct of the affairs of the Company by the Directors regarding the failure of the Company to take action on behalf of the Company that would benefit all shareholders with respect to funds currently held by U.S. Bank; (ii) the refusal of the Company to make dividends/distributions that are warranted given the Company's wind down status, (iii) the action of the Company in making an indefensible share buy-back offer to Applicant that was comprised in great part of the Company seeking to obtain a 15% reduction in the cash amount attributable to the Applicant's interest, for the benefit of its majority shareholder (and which implied the threat of the Company's continuing refusal to maximize cash due the Company and provide fair dividends/distributions to Applicant of its share of Company cash if the "offer" was not accepted; (iv) the refusal of the Directors to cause the Company to respond sufficiently to information requests from Applicant as minority shareholder, (v) the failure of the Company to respond properly to Applicant's rejection of the aforementioned share buy-back proposal (only, "The various allegations made in that letter are wrong."), (vi) the Company's transparently self-serving dividend notice of only some 56% of unencumbered cash (despite the Company's purported willingness to use in excess of 85-90% of the Company's cash for the irrationally below market buy-back offer that required a 15% discount on cash), and (vii) the Company's rejection without legitimate basis of the Applicant Exit Proposals as defined below.

12 All of the foregoing, taken together with the inaction of the Company and the below described conduct of the Company and its representatives, is not defensible, but is clearly reflective of the Company's intention to continue with its unfair focus upon failing in its duties to Applicant as a minority shareholder.

Purpose of Application

13 The purpose of the Application is to mitigate further harm being caused to the Applicant and its shareholding in the Company.

14 As shown herein, the Applicant has made good faith proposals to rectify the unfair prejudice by making proposals to effect a distribution of the Company's assets to Applicant in an amount reflective of its ownership interest in the Company (the **Applicant Exit Proposals**). The Applicant has demanded the Company take action against US Bank to obtain withheld

funds that should be paid to the Company by US Bank (the **US Bank Redemption Proceeds Claim**) for distribution to shareholders of the Company. Finally, the recent actions of the Company in limiting dividends that should be payable to shareholders given the Company wind down status is another form of relief to which the Applicant is entitled. Currently, the Applicant is not seeking the right to bring a derivative action against the Directors, though all rights are reserved.

15 The Applicant seeks the relief set forth in the Application, and is entitled to such relief. The Company seeks approval by the Court of the Applicant Exit Proposals, which would provide the Applicant with its full share of assets attributable to its interest, including the right to pursue an action for its own account against US Bank, for recovery of funds wrongfully held by US Bank allocated to the interest of the Applicant. The Company has declared that US Bank is wrongfully withholding such funds of the Company, but has taken no action and will not disclose to the Applicant any plans for taking any action to recover Company funds that should be distributed to shareholders. Therefore approval of the Applicant Exit Proposals would allow the Company to maintain its current no-action policy, with respect to its remaining assets and shareholders, while providing the Applicant with an independent right to pursue US Bank for its own account.

16 Alternatively, as section 350(2)(b) of the Companies (Guernsey) Law, 2008 provides the Royal Court to "*require the company – . . . . . (ii) to do any act which the applicant has complained it has omitted to do,*" if the Court is not disposed to approve the Applicant Exit Proposals, the Applicant seeks as alternative relief provided for in Section 350(2)(c) - that the Court "*authorise civil proceedings to be brought in the name and on behalf of the company by such persons and on such terms as the Court may direct*" such that the Applicant can bring an action against US Bank for recovery of the "Redemption Proceeds" as defined below. As additional alternative relief (if the Court does not approve the Applicant Exit Proposals), the Applicant seeks relief under Section 350(2)(b)(ii), that the Court "*require the company (ii) to do any act which the applicant has complained it has omitted to do*" by ordering the Company to make full distributions to shareholders of unencumbered cash in an amount reflective of the Company's wind down status and absence of investment activities.

Adverse Interests of Certain Parties to Applicant

17 Acis Capital Management, L.P. (**Acis**), is the portfolio manager in respect of certain of the CLOs in which the Company has an investment and Highland HCF Advisor, Ltd is the Company's appointed general portfolio manager (the **Portfolio Manager**). HCM, Acis, the Portfolio Manager and the Company are a part of the same structure of entities, and HCM and Acis both have a close relationship with each other and with the Company for the following reasons:

17.1 The HCM Shareholders are collectively the majority shareholder in the Company;

17.2 HCM is the sole shareholder of the Portfolio Manager;

17.3 HCM is the sub-advisor to the Portfolio Manager;

17.4 HCM and Acis previously had common ownership, as Joshua N. Terry (**Terry**), who is now the President and the sole limited partner of Acis, is a former limited partner of HCM;

17.5 HCM and Acis have a close commercial relationship as Acis was founded as a subsidiary of HCM and managed HCM's portfolio of CLOs; and

17.6 Acis is a creditor in HCM's current bankruptcy proceedings in the Bankruptcy Court.

18 Acis also filed a bankruptcy case in the Bankruptcy Court, and within proceedings therein has brought a complaint in the Bankruptcy Court against Applicant, seeking judgment for several hundreds of thousands of dollars.

19 HCM, within its bankruptcy proceedings is adverse to Applicant regarding an amended proof of claim filed by Applicant against the bankruptcy estate of HCM.

20 Further, the alleged successor to HCM with respect to certain alleged claims held by HCM as of the bankruptcy petition date (a litigation sub-trust), has filed a complaint in the Bankruptcy Court against Applicant seeking judgment for approximately US $100 Million, which Applicant has in part sought dismissal as a matter of failure to state a claim, but the bankruptcy estate of HCM would be the ultimate beneficiary (along with the sub-trust trustee and its counsel) of any recovery.

21 In effect, therefore, both HCM and Acis have made litigation claims against Applicant within two bankruptcy cases.

22 As will be more fully set out below, the relationships between HCM, the Company and Acis have become improperly close and certain decisions and actions taken by the Company have clearly been made to promote the interests of the HCM Shareholders as the collective majority shareholder and Acis (in some cases the Company even effectively acting as the agent of HCM and/or Acis). This conduct has been to the detriment of the Applicant as minority shareholder and has caused unfair prejudice to the Applicant. The incidents of unfair prejudice which are explained more fully in this affidavit are summarised below.

22.1 The Company is beyond its investment period and is not being actively managed. As such, the Company serves as an unnecessary layer of complexity within the structure and does not have any objective purpose or commercial rationale that would interfere with the relief requested within the Application;

22.2 Due to the lack of need for active management, and as well because the Company has provided no explanation for its actions or information by which Applicant can determine that it is being fairly treated, Applicant has to draw its own conclusions, which include that the Company is being maintained and operated in such a way and for no reason other than to prefer other interests of its majority HCM Shareholders, with respect to claims of HCM that have been asserted against Applicant within the HCM bankruptcy process, and as well to favour Acis, which has also asserted claims against Applicant related to its own bankruptcy process;

22.3 The Company has mismanaged its assets by failing to take sufficient steps to resolve the unlawful withholding of funds by US Bank, the indentured trustee, which are due to be distributed to the Company;

22.4 The Company has invalidly sought to appoint a voting member to the advisory board of the Company to represent the HCM Shareholders' interests as collective majority shareholder; and

22.5 The Company has provided limited and insufficient responses to repeated information requests by the Applicant on important and pressing issues, thereby breaching the Applicant's shareholder rights to information.

23 Confirming that the Company is operating in a manner that appears intentionally prejudicing the interests of Applicant as minority shareholder, the Company, rather than take appropriate action against US Bank or issue fair and warranted dividends, has issued a buy-out proposal that severely undervalues the interests of Applicant, to such an extent that the Company seeks to obtain a 15% discount on cash that should be immediately distributed to Applicant. The threat implied by the buy-out proposal is that the Company will continue to withhold distributions to Applicant unless Applicant submits to an undervalued buy-out amount. This is irrefutable evidence of unfair prejudice and unwillingness of the Company to act in the best interest of Applicant as a minority shareholder.

24 Because the Company has refused to distribute available cash, for which it has no investment purpose and which is losing value every day due to inflation, the Applicant Exit Proposals would provide Applicant with immediate right to all available cash attributable to its interest in the Company, and as well immediate right to negotiate directly with US Bank for its share of the Redemption Proceeds and commence proceedings if necessary. Alternatively, it is necessary, for Applicant to be allowed to act on behalf of the Company to take action against US Bank for payment of Company funds that US Bank is unlawfully withholding. It would be unconscionable for the Court to direct the Company to take such action as it has consistently refused (without explanation) to engage US Bank for the Company's funds, and Applicant has good reason for its believe and conclusion that the Company would unfairly draw out any sort of proceedings, and as well maintain its stance of refusing to provide Applicant with information as to its engagement with USD Bank. Applicant as well seeks alternatively to have the Court compel fair distributions to all shareholders of available cash. I will now set out the background facts in relation to the Company, including the business, assets, shareholders, directors of the Company and the management of the Company's assets.

Background

Shareholding of the Company

25 The current shareholding of the Company is as follows:-

25.1 The Applicant is the holder of 49.015% of the issued share capital in the Company (70,314,387.44 shares);

25.2 HCMLP Investments is the holder of 49.985% of the issued share capital in the Company;

25.3 HCM is the holder of 0.627% of the issued share capital in the Company; and

25.4 The remaining shareholding in the Company of 0.373% is held by four individuals, namely Lee Blackwell Parker III, Hunter Covitz, Jon Poglitsch, and Neil Desai

(collectively the **Shareholders**).

26 During 2015, the Applicant initially subscribed for an interest of 100% shareholding (143,454,001.00 ordinary shares) in the capital of the Company based upon the advice from HCM which was given to the Applicant's parent entity, Charitable DAF Fund L.P (**Charitable DAF**) initially, and then from Charitable DAF to Applicant.

27 The Applicant remained the sole shareholder of the Company up until 15 November 2017. Pursuant to a Subscription and Transfer Agreement dated 15 November 2017 (the **Subscription and Transfer Agreement**), the Applicant transferred and sold a total of 50.8% of its shareholding (73,139,613.56 ordinary shares) to several new shareholders, including 0.63% of its shareholding which was transferred to HCM. Following such transfer, the Applicant's shareholding in the Company was further reduced to its current shareholding of 49.015% (70,314,387.44 ordinary s/hares). A copy of the Subscription and Transfer Agreement is at pages **247 to 277**.

28 As of 15 November 2017, HCM held 0.63% of the issued share capital of the Company, and it then subsequently acquired an additional 49.98% (the **HarbourVest Shares**) of the issued share capital of the Company from HarbourVest Dover Street IX Investment L.P. (**Dover IX**), HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HV International VIII Secondary L.P. and HarbourVest Skew Base AIF L.P. (collectively, **HarbourVest**) (the **HarbourVest Share Purchase**).

29 As a result of the HarbourVest Share Purchase, HCM obtained a majority shareholding of 50.612% of the equity in the Company. On 14 January 2021 HCMLP Investments purchased 49.985% of the Company's ordinary shares.

30 HCM and HCMLP together hold the majority shareholding in the Company. By virtue of their affiliation, these entities act in concert as one and are treated as collective majority shareholders (the **HCM Shareholders**). The Company itself has confirmed in the Memorandum of Law dated 24 November 2021 at pages **278 to 299** filed in support of the Company's Motion to Intervene in certain proceedings (the **Motion to Intervene Submissions**) that HCM is "*directly and indirectly [the Company's largest shareholder…*" and therefore HCM is treated as a collective majority shareholder based on its affiliation with HCMLP (see page **287**). The Company's Guernsey advocates have also confirmed that HCM and HCMLP are treated as a collectively majority shareholder in a letter dated 14 April 2022 at pages **300 to 306** which states that "*…HCM and its affiliate, HCMLP Investments, LLC (collectively, the "HCM Shareholders") collectively own more than 50% of the Company's shares…*" (see page **306**).

Business of the Company

31 The Company (formerly known as Acis Loan Funding, Ltd) was incorporated in Guernsey on 30 March 2015 as a closed-ended registered collective investment scheme pursuant to The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the **POI Law**). The Company commenced operations on 10 August 2015 and changed its name from Acis Loan Funding, Ltd. to Highland CLO Funding, Ltd. on October 27, 2017. A copy of the Articles of Incorporation of the Company adopted by special resolution and passed on 15 November 2017 (the **Articles**) is at pages **307 to 344**.

32 The Members' Agreement relating to the Company dated 15 November 2017 (the **Members' Agreement**), regulates the relationship between the Shareholders and between the Shareholders and the Company itself, as well as the operation and management of the Company. A copy of the Members' Agreement is at pages **345 to 372**.

33 Pursuant to clause 1 read together with Recital (B) of the Members' Agreement at page **347**, the Company's business is providing its investors with exposure to senior secured loans and CLOs, on both a direct and indirect basis, through the use of the investments described in the Company's Investment Policy (the **Business**). Generally, the relevant loans are high yield and are deposited into a trust which issues notes that are sold to investors.

34 Clause 2.1 read together with clause 2.2 of the Members' Agreement at page **350** provides that the Shareholders and Company shall, so far as they are able (including without limitation by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company):-

34.1 procure that the Company's principal activities shall be the pursuit of carrying on the Business, conducted in accordance with the provisions of:

(a) the Members' Agreement (referred to above);

(b) the Offering Memorandum in relation to the Company, dated 15 November 2017, at pages **373 to 494** (the **Offering Memorandum**);

(c) the Subscription and Transfer Agreement (referred to above) ; and

(d) the Articles (referred to above); and

34.2 not take any action inconsistent with the provisions of the Offering Memorandum, including, without limitation the investment strategy set forth therein (the **Investment Policy**) at pages **429 to 433**.

35 The Offering Memorandum provides at page **429** that the Company's stated investment objective is to provide its shareholders with "*stable and growing income returns, and to grow the capital value of the [Company's] investment portfolio through opportunistic exposure to CLO Notes*" and other assets.

36 The most recent audited financial statements of the Company for the year ended 31 December 2021 (the **2021 Accounts)** at pages **495 to 526** reflect that the investment period of the Company ended on 30 April 2020 and that the term of the Company is due to end on 15 November 2027, after which the Company will be wound up and dissolved (see page **583**).

Directors of the Company

37 The current directors of the Company are Mr Richard Michael Boléat (**Mr Boléat**) and Mr Richard Mark Burwood (**Mr Burwood**) (together the **Directors**). The Directors, who are both independent non-executive directors, were elected and appointed on 7 July 2020.

38 The former directors of the Company are William Scott and Heather Bestwick, who resigned as directors on 7 July 2020.

39 The Offering Memorandum provides that the Directors are committed to maintaining high standards of corporate governance and that the Company complies with and will continue to comply with the Guernsey Financial Services Commission's Code of Corporate Governance issued on 30 September 2011 (the **Code**) (see pages **442 to 443**).

Management of the Company assets and inter-relations between entities

40 The Company's assets as at 31 December 2021 are listed and described more fully at pages **506 to 507** and **517 to 519** in the 2021 Accounts. The total net asset value of the Company as at 31 December 2021 was US$ 76,100,545. Of that amount the Company asserts that at least $38,000,000 is cash on hand.

41 Amongst the Company's investments are significant interests in the following CLOs which were all historically and are currently managed by Acis:

41.1 ACIS CLO 2014-4 Ltd.;

41.2 ACIS CLO 2014-5 Ltd.; and

41.3 ACIS CLO 2014-6 Ltd.

(the **ACIS CLOs**).

42 Charitable DAF was the original holder of the ACIS CLOs which were subsequently transferred to the Company as consideration for the Applicant's shareholding in the Company.

43 The Company has appointed and retained the current Portfolio Manager pursuant to a portfolio management agreement dated 15 November 2017 (the **PMA**), a copy of which is at pages **527 to 552**. Pursuant to clause 2 of the PMA, the Portfolio Manager acts as investment manager to the Company and manages the investment and reinvestment of the cash, subject to and in accordance with the investment policy as set forth in the Offering Memorandum (see pages **527 to 528**). The Portfolio Manager and/ or its affiliates have very wide authority in respect of engaging in transactions on behalf the Company, including the investment and reinvestment of the cash, financial instruments, and other properties

comprising the assets and liabilities of the Company, pursuant to clause 5 of the PMA (see pages **528 to 533** for the full description of such authority). The Portfolio Manager has broad discretion to select and manage the Company's portfolio of investments, including the ability to instruct the Company's custodian with respect to any acquisition, disposition or sale of investments and to provide certain support and assistance, personnel and credit and market research and analysis in connection with the investment and ongoing management of the Company's portfolio.

44 Pursuant to the terms of the PMA, the Portfolio Manager may act (either itself or through an affiliate) as the Portfolio Manager to the CLOs and is responsible for rendering discretionary investment advice to the Company and for ensuring the Company has the required personnel and credit research available to it to make necessary business decisions and carry on the day-to-day management of the Company's business and to implement its investment objective and policy. In addition, the Portfolio Manager (or one of its affiliates) may also manage the Company's CLOs pursuant to management agreements to be entered into from time to time (see page **501** for a description of the role of the Portfolio Manager in the 2021 Accounts).

45 In addition to being a collective majority shareholder in the Company (together with HCMLP), upon information and belief, HCM is also the sub-advisor to the Company (see 2021 Accounts at page **497**), and is sole shareholder of the Portfolio Manager (see page **553** in the settlement agreement concluded between HCM and other parties where it is confirmed that the Portfolio Manager is a subsidiary of HCM). Therefore, HCM is in a position to control the Portfolio Manager through its ability to exercise its majority voting power in the Portfolio Manager and its role as sub-advisor and General Manager. Both the Portfolio Manager (directly pursuant to the PMA) and HCM (directly or indirectly by virtue of its control of the Portfolio Manager) provide advisory and management services to the Company and therefore have a close relationship with the Company. In fact, the Company has confirmed in the Motion to Intervene Submissions that that HCM "*through another entity, acts as [the Company's] portfolio manager*" (see page **287**). Therefore effectively and for all intents and purposes, HCM is the Company's ultimate portfolio manager, and is now (for the first time in the Company's structural history) is both (along with HCMLP Investments) the majority shareholder while simultaneously suing Applicant.

46 The Company, Acis, HCM and the Portfolio Manager are all part of the same structure and have a close commercial relationship and economic ties with one another. The Company and HCM (through the Portfolio Manager) each hold an interest in a company known as Highland CLO Management, LLC (**Highland CLO Management**) (see Offering Memorandum at page **382**). The Company also has an investment amounting to 80.85% interest in ACIS CLO Management Holdings, L.P. (**ACMH**), an affiliated entity controlled by the Portfolio Manager (and therefore indirectly controlled by HCM) (see the 2021 Accounts at pages **507, 513, 517, 518 and 521**). Therefore the Company and HCM both have a financial interest in more than one of the same entities. The Company and Acis also each hold an interest in a company known as Acis CLO Management, LLC (**Acis CLO Management**). HCM controls the major economic decisions of Highland CLO Management and ACMH (through the Portfolio Manager) and Acis controls the major economic decisions of Acis CLO Management.

47 A structure diagram setting out some of the relevant entities is at page **562**. While the structure diagram is not necessarily materially different from that from inception, or contrary to the Membership Agreement, the absence of ongoing advisory purpose, together with the fact that that now while HCM holds the power of Portfolio Manager along with majority shareholder (with HCMLP Investments), Applicant is adverse to both HCM and Acis within the Bankruptcy Court, highlights the unfair prejudice caused by the ongoing "operations" of the Company, which include refusal to distribute Applicant's share of material cash assets (of some $38 Million), refusal to take action against US Bank to obtain additional cash assets (approximately $33-35 Million), and finally, manifesting the intention to continue its unfair prejudice by making the buy-out offer which in primary part seeks to impose upon Applicant a 15% discount on cash.

48 Having outlined the background of the Company, its shareholders and asset managers, I now turn to the complaints and concerns in relation to unfair prejudice which the Applicant has in relation to the management of the Company, that underlie the request(s) made in the Application.

Bankruptcy of Financial Advisors and conflict of interest

49 As mentioned above, on 16 October 2019, HCM filed for Chapter 11 bankruptcy in the Delaware Bankruptcy Court, which was later transferred to the Bankruptcy Court of the Northern District of Texas (see the court order dated 4 December 2019 evidencing the HCM bankruptcy proceedings at pages **563 to 564**). Prior to that, Acis had also filed for Chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas. A copy of the Court Order confirming the Trustee's Plan in respect of the bankruptcy proceedings of Acis dated 31 January 2019 (the **Acis Bankruptcy Order**) is at pages **565 to 571**.

50 Pursuant to clause 9(a) of the PMA (see page **535 to 536**), the Portfolio Manager and HCM (as an affiliate of the Portfolio Manager) receive, in consideration for its services, a fee equivalent to all expenses incurred by the Portfolio Manager in the performance of its obligations related to the services set out in the PMA (defined as all Operating Expenses in the PMA). This is confirmed at page **515** in the 2021 Accounts and pages **443 to 444** in the Offering Memorandum.

51 Pursuant to clause 9(c) of the PMA at page **536**, the Portfolio Manager will also receive certain distributions as set forth in the Dividend Policy (as defined in the terms of the Offering Memorandum at pages **396 to 397**). In this regard, the Offering Memorandum provides that:

"*Following the Investment Period, after satisfaction of all expenses, debts, liabilities and obligations of the Company, any interest, proceeds from the realization of portfolio investments or other cash generated by the portfolio will be distributed by the Company to the Shareholders as a dividend on each Quarterly Dividend Date in accordance with the distribution priority as follows (the "Distribution Priority"):*

First, 100% to the Shareholders pro rata based on the number of Shares held until each Shareholder has received (i) pursuant to this clause (i), aggregate distributions from the Company equal to all capital contributions made by such Shareholder plus (ii) an amount

necessary for such Shareholder to receive a cumulative rate of return of 8.0% per annum, compounded annually, on such Shareholder's aggregate capital contributions;

Second, 100% to the Portfolio Manager until the Portfolio Manager has received aggregate distributions from the Company equal to 20% of the sum of all distributions made in excess of aggregate capital contributions made by Shareholders;

Third, 80% to the Shareholders pro rata based on the number of Shares held and 20% to the Portfolio Manager until each Shareholder has received aggregate distributions from the Company equal to all capital contributions made by such Shareholder plus an amount necessary for such Shareholder to receive a cumulative rate of return of 16% per annum, compounded annually, on such Shareholder's aggregate capital contributions; and

Thereafter, 70% to the Shareholders pro rata based on the number of Shares held and 30% to the Portfolio Manager."

52 The Portfolio Manager and HCM as affiliate and Sub-Adviser to the Portfolio Manager could argue that they are entitled to substantial compensation from the Company for their services, and HCM also could assert that it is entitled to maintain the indirect benefit of the Portfolio Manager's compensation due to it being the sole shareholder in the Portfolio Manager. Given the absence of continuing purpose, this described compensation structure unduly benefits HCM and Acis, to the prejudice of Applicant, and Applicant cannot assume that the Company will not dilute the Company assets further by making future payment of this compensation.

53 Most concerning to the Applicant is that this apparent conflict of interest (possibility of continuing compensation without corporate purpose), which because of the inappropriately close relationship the Company has with HCM, favours the interests of HCM and the HCM Shareholders as collective majority shareholder over the other shareholders in the Company. While it may be that HCMLP Investments does not benefit directly, its ownership objectively appears designed to provide HCM with the argument that the vast majority of the HCM Shareholders' interests receives no benefit so as to thwart an unfair prejudice action, when in fact it is the majority status collectively that maintains the ability of the Company to suggest that the maintenance of the HCM compensation structure is appropriate.

Unlawful Redemption Withholding

54 The indentured trustee of the ACIS CLOs is U.S. Bank N.A. (**U.S. Bank**). On or around 12 May 2021, the Company submitted a redemption request to U.S Bank in relation to each of the ACIS CLOs (see Company's Interim Audited Financial Accounts dated 30 June 2021 at pages **572 to 595** (the **2021 Interim Accounts**) confirming this at page **574 to 575**). On 14 May 2021, NexPoint Diversified Real Estate Trust (formerly known as NexPoint Strategic Opportunities Fund) (**NexPoint**) filed a complaint in the United States District Court for the Southern District of New York against Acis (in its capacity as the then portfolio manager of the Company), U.S. Bank (in its capacity as trustee of the Company), Terry (in his capacity as Acis' principal) and Brigade Capital Management, L.P. (in its capacity as sub-adviser to Acis) (the **NexPoint Litigation**). The NexPoint Litigation was brought on the basis of inter alia the alleged breach of fiduciary duty in the management of certain CLOs in which

NexPoint invested, resulting in a loss to NexPoint. A copy of the complaint filed by NexPoint in the NexPoint Litigation is at pages **596 to 645**.

55 On or around 23 June 2021, the Company's request for a redemption was satisfied and Acis and U.S. Bank liquidated nearly all of the ACIS CLOs and redeemed the secured notes, leaving only certain subordinated notes outstanding (the **Redemption**). As a result, the ACIS CLOs were largely redeemed and the liquidation of the CLOs generated sufficient proceeds to make significant payments to the holders of subordinated notes (the **Redemption Proceeds**).

56 The Redemption Proceeds were supposed to be distributed to the various noteholders, including, principally, the Company in accordance with the rights of those noteholders (see pages **283, 284, 289 and 290** of the Motion to Intervene Submissions). However, U.S. Bank, has reserved the entire Redemption Proceeds to pay for their legal expenses and any potential liability in connection with the NexPoint Litigation (see pages **289 to 290** of the Motion to Intervene Submissions). The value of the cash holdings retained by U.S. Bank as of 21 March 2021 amounted to approximately US$39 million (as reflected in the 2021 Accounts at page **498**).

57 US Bank's contention is that its retention of the Redemption Proceeds is authorised by the relevant CLO indentures on the basis that it is required in order to protect US Bank (and perhaps Acis; Applicant has insufficient information to make an allegation here) from the effects of the NexPoint Litigation as well as its asserted concern over the perceived threat of litigation against the Company by the Applicant. In this regard, see page **498** in the 2021 Accounts, page **670** in the letter from the Company to the Applicant dated 23 July 2021, and page **647 to 649** in the letter dated 26 October 2021 from Carey Olsen (Guernsey) LLP, the advocates for the Company (**Carey Olsen**), to Ogier (Guernsey) LLP, the advocates for the Applicant (**Ogier**) (the **October 2021 Letter**).

58 In the October 2021 Letter, it states that "*US Bank's stated justification for retaining the CLO redemption proceeds at issue is premised on certain threatened litigation from CLO Holdco and certain other presently-filed litigation by Nexpoint Strategic Opportunities Fund…including litigation in which the Company is cited as a nominal defendant*" (see pages **647 to 648**). The Company has declared in pleadings that U.S. Bank has no legal right to withhold the Redemption Proceeds, and therefore has acknowledged that the supposed "perceived threat" of litigation grants U.S. Bank no basis to withhold.

59 CLOs are structured products with rated debt tranches, and therefore they are intended to operate automatically in accordance with cash waterfall provisions. There is no discretion by U.S Bank to withhold the Redemption Proceeds for any reason, including to fund any litigation such as a hypothetical potential future claim based on a purported indemnity (which the Company agrees does give rise to a right on behalf of U.S. Bank to withhold the Redemption Proceeds). The withholding by U.S. Bank of the Redemption Proceeds is therefore unlawful (the **Unlawful Redemption Withholding**). The Company agrees, despite its attempt to shirk duties by placing blame on Applicant, and its refusal to take sufficient action to recover the Redemption Proceeds.

60 As mentioned, the Company has in fact recorded its disagreement with U.S. Bank's treatment of the Redemption Proceeds several times. In the Motion to Intervene

Submissions at pages **292 to 293** it states "*There is no basis in the Indenture or the law to reserve funds for Defendants' potential liability*" and in the 2021 Interim Accounts it states at page **575** that "*The Directors' view, on advice, is that the retention of cash by the indenture trustee is unlawful and is inconsistent with the terms of the relevant CLO indentures. Accordingly, the Directors are taking urgent and proportionate steps to secure unrestricted control over this cash and any as yet unliquidated securities. I will communicate further with all shareholders as this matter progresses.*" This is reiterated in the 2021 Accounts at page **498** where it provides that it is the Directors' opinion that there is no proper basis in law for the withholding of the Company's assets by U.S. Bank.

61 In the October 2021 Letter it also states that "*US Bank has explained its position on this matter openly and consistently. The Company disagrees with that position and has communicated that disagreement to US Bank*" (see page **648**).

62 Due to the Unlawful Redemption Withholding, significant payments that the Company would otherwise receive from the liquidation of the ACIS CLOs have been delayed on an unlawful basis and the funds that make up a portion of the Applicant's shareholding in the Company continue to be depleted. The Company has filed a motion seeking to intervene in the NexPoint Litigation purportedly in order to support the opposition to NexPoint's claim and therefore seek to minimise the funds used by U.S. Bank for its defence to the NexPoint Litigation (see email from Company dated 3 December 2021 at pages **650 to 651**). However the Company has taken insufficient steps to compel U.S. Bank to release the Redemption Proceeds and thereby fully remedy the Unlawful Redemption Withholding, that the Company itself has claimed to be unlawful.

63 The Company's intervention in the NexPoint Litigation will inevitably result in the Company incurring litigation costs, which the Company in seeking the intervention has acknowledged should be spent. But the objective of the intervention is purportedly to accelerate the payment from U.S. Bank, by ending the litigation by NexPoint. Notwithstanding its willingness to expend costs in litigating against NexPoint, the Company has been unwilling to expend necessary costs to obtain full payment of the withheld Redemption Proceeds, which would be simply litigation upon the Indenture documents against U.S. Bank, solely, and should have been explored as an action that could have been taken within the NexPoint litigation or otherwise (see below).

64 On 3 December 2021, the Company, acting through Mr Boléat, sent an email to the Applicant suggesting that, the easiest approach to receiving funds would be if the Applicant were able to "*procure a release from its affiliate NexPoint*". A copy of this email is at pages **650 to 651**).

65 This communication evidences the prejudice being caused to Applicant. Applicant is not an affiliate of NexPoint under any proper definition of the term, but the Company has assumed affiliate status and the power of Applicant to cause conduct on the part of NexPoint. In fact, it is the case that HCM has within bankruptcy proceedings routinely (without evidence) asserted that Applicant is an affiliate of numerous parties with which it is not affiliated, so we assume that the Company representatives did not simply make up the suggestion, but that the "assumption" of affiliate status is coming from HCM. This acceptance of assertions from HCM (without communication with Applicant) is the definition of prejudice. The Company has already stated in its own intervention submissions that U.S.

Bank has no right to retain the proceeds related to Acis 6, despite the NexPoint litigation; so it cannot be heard to say that it should not commence action against U.S. Bank when in fact the only litigation regarding the other CLO's has been instituted by U.S. Bank, seeking an improper declaratory action that Applicant should not be able to sue U.S. Bank. It simply is improper for the Company to place any undue condition on the distribution of the Redemption Proceeds or fail to take sufficient action to compel U.S. Bank to distribute the Redemption Proceeds, under an incorrect assumption that Applicant can resolve litigation by a third party. The Company is entitled to the Redemption Proceeds. The Company should also, within the Intervention submissions, proposed that upon intervention it would act as plaintiff in counterclaim with a direct Claim against U.S. Bank for immediate distribution of the Acis 6 proceeds (together with any and all fees, costs, and damages to which the Company is entitled -- as opposed to attaching only a motion to dismiss the NexPoint complaint. Clearly the Company has exhibited an unwillingness to bring action against US Bank, as it withheld such action from inclusion in its Intervention Submissions, despite such an approach being proper, even if in the alternative.

66 The Company is clearly not fully committed to resolving the Unlawful Redemption Withholding and are even willing to use inappropriate suggestions to take advantage of the circumstances in order to secure a release from the NexPoint Litigation, for some inexplicable purpose, upon a groundless assertion of affiliate status; while at the same time the Company, though making clear that it has a viable claim against U.S. Bank for distribution of the Unlawful Redemption Withholding, refuses to take action to obtain that result. Therefore it is clear that while the Company has no concern for spending litigation expenses pursuing a release or withdrawal by NexPoint in respect of the NexPoint Litigation that is purely for the benefit of Acis, it simultaneously withholds the prospect of any direct action against U.S. Bank on its own proclaimed right to obtain from U.S. Bank the Redemption Proceeds.

67 As bad, by failing to take sufficient steps to resolve the Unlawful Redemption Withholding, the Company has chosen to implicitly support U.S. Bank's unlawful position to the detriment of the Applicant and has preferred the interests of Acis (in relation to its position in the NexPoint Litigation) over the interests and rights of shareholders, and in particular, Applicant as minority shareholder. This again raises a conflict of interest and instance of the Applicant being unfairly prejudiced by the conduct of the Company.

68 On 28 February 2023, the Applicant received a letter from the Company, a copy of which is at pages **657 to 658**, providing that pursuant to a settlement agreement, US Bank and Acis have agreed to release US$ 16.5 million of the Redemption Proceeds (approximately 40%), and that the parties have agreed to engage in "*further discussions regarding the release of the remaining funds upon the final disposition of the pending lawsuits*". Despite this, the majority of the Redemption Proceeds has not been released and the Unlawful Redemption Withholding remains in respect of that significant portion. The Company's failure to take sufficient steps to remedy the Unlawful Redemption Withholding as well as the apparent conflict of interest in relation to Acis, has caused and continues to cause loss and resultant unfair prejudice to the Applicant.

69 Despite several requests by the Applicant (described further below), the Company has also refused to provide the Applicant with any information relating to the Company's attempts to procure the release of the remaining Redemption Proceeds by US Bank, other than the

information provided in the letter of 28 February 2023. The information provided in that letter is vague, and does not provide the Applicant with the required comfort that this issue is being seriously addressed by the Company and that the Company is attempting to remedy the unfair prejudice to the Applicant.

Trading status of Company

70 As mentioned above, the investment period of the Company ended on 30 April 2020 and the Company is currently in wind down mode, which is the process of dissolving a business by liquidating stock, paying off creditors, and distributing any remaining shareholder assets. In the case of the Company, the Acis CLOs are in runoff, meaning there is a decline in fixed-term investments due to the fact that the bulk of the Company's assets have been redeemed and the proceeds of such redemption are being held in cash by the Company US Bank in its capacity as indentured trustee (while such cash is declining in value by aggressive inflation). The Company is in the process of liquidating its investment portfolio with a view to a complete return of capital to shareholders. The Applicant Exit Proposals are simply an acceleration of the liquidation process with respect to Applicant, and the Company can thereafter take whatever actions upon which it and its remaining shareholders agree.

71 The "Business" of the Company as defined in the Members Agreement and the investment policy set out in the Offering Memorandum is to provide its shareholders with stable and growing income returns and to grow the capital value of the investment portfolio through opportunistic exposure to senior secured loans. Due to the current trading status of the Company, it is not actively fulfilling the purpose for which it was intended and is no longer operating in accordance with the Business of the Company.

72 The Articles and the Members' Agreement clearly do not anticipate the current investment status of the Company where there are no more investable assets and the only remaining assets (the Acis CLOs) are in wind down mode. The shareholders of the Company are not benefitting from an investment in the underlying CLO assets as they had anticipated when entering the structure, and the fact that the proceeds from the Redemption are apparently being unlawfully withheld by US Bank and that the Company has failed to take proper steps to remedy the position further supports the argument that the business of the Company is no longer operating in accordance with its stated investment objective.

73 Further, the Company may even be in breach of clause 2.1 read together with clause 2.2 of the Members' Agreement provides that the Shareholders and Company shall, so far as they are able procure that the Company's principal activities shall be the pursuit of carrying on the Business, which is currently not being carried out.

74 In these circumstances, the Applicant has a legitimate expectation that the remaining assets of the Company will be distributed to the shareholders and it is being unfairly prejudiced on an ongoing basis as long as these funds are not distributed.

Invalid Appointment of Voting Member to Advisory Board

75 Pursuant to clause 4.1 of the Members' Agreement at page **351**, the Company is required to establish an advisory board composed of two individuals, one of whom must be a representative of the Applicant (the **Advisory Board**). On 2 November 2021, and pursuant

to the Applicant's rights under clause 4.1 of the Members' Agreement, the Applicant appointed me (being one of its directors) as its representative on the Advisory Board. Notice of my appointment was provided to the Company and its shareholders and the Company acknowledged such appointment by letter to me dated 6 January 2022. A copy of the notice of my appointment to the Advisory Board is at pages **659 to 660**. Pursuant to my appointment, I am the sole voting member of the Advisory Board.

76 Pursuant to clause 4.3 of the Members' Agreement at page **351 to 352**, the main function of the Advisory Board is to provide general advice to the Portfolio Manager or the Company with regard to Company activities and operations and other matters, and the Portfolio Manager may not act contrary to the advice of the Advisory Board.

77 Pursuant to clause 13 of the PMA at pages **544 to 546**, the Advisory Board has the unilateral right to terminate the PMA and remove the Portfolio Manager from its position independently of the Directors and the Company for cause, including where the Portfolio Manager breaches any terms of the PMA or the Offering Memorandum. Pursuant to clause 4(a)(xiv), the Portfolio Manager also may not cause the Company to engage in transactions, directly or indirectly, with the Portfolio Manager or its principals or affiliates without the consent of the Advisory Board of the Company. The functions and duties of the Advisory Board therefore include the review of the performance and decisions of the Portfolio Manager to ensure it complies with its duties, and to maintain checks and balances on transactions between the Company and the Portfolio manager/ its affiliates/ principals, including HCM as an affiliate of the Portfolio Manager.

78 The Applicant understands that HCM has appointed Mr Richard Katz (**Mr Katz**) to the Advisory Board as a second member by virtue of HCM's right as the successor in title to the interest in the Company previously held by Dover IX. Pursuant to clause 4.1 of the Members' Agreement at page **351**, no voting member of the Advisory Board shall be a controlled Affiliate of the Portfolio Manager. "Affiliate" is defined in the Members' Agreement at page **348** as "*(i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person or (ii) any other person who is a director, officer or employee (a) of such person, (b) of any subsidiary or parent company of such person or (c) of any person described in clause (i) above.*"

79 Furthermore, pursuant to clause 4.4 of the Members' Agreement at page **352**, a member of the Advisory Board shall be deemed removed from the Advisory Board if *"...such member is no longer an officer, director, manager, trustee, employee, consultant or other representative of CLO Holdco or Dover IX [or their successors in title], as applicable, or their respective Affiliates and shall be replaced as soon as practicable with a representative of CLO Holdco or Dover IX, or their respective Affiliates, as applicable..."*.

80 HCM is in control of the Portfolio Manager as its wholly-owned subsidiary, and by virtue of clause 4.4, Mr Katz, as the appointed representative of HCM on the Advisory Board, may only be appointed to the Advisory Board for so long as he is an Affiliate of HCM. Therefore it is clear that, although Mr Katz may be appointed to the Advisory Board, any attempt by Mr Katz to assert a right to vote on the matters to be considered by the Advisory Board will be a breach of the Members' Agreement.

81 Further pursuant to clause 4.2 of the Members' Agreement it provides that the quorum for a meeting of the Advisory Board shall be "*...all of its members* ***entitled to vote****..."* and that all actions of the Advisory Board shall be "*... (i) by a unanimous vote of all of the members of the Advisory Board in attendance in a meeting at which a quorum is present and* ***entitled to vote*** *and not abstaining from voting or (ii) by a written consent in lieu of a meeting signed by all of the members of the Advisory Board entitled to consent and not abstaining from consenting"* (see page **351)**. Therefore, despite any assertions by the Directors on behalf of the Company that the Advisory Board could not be quorate or act if Mr Katz were a non-voting member, it is clear that I, acting by myself and as the sole voting member appointed to the Advisory Board, will constitute the quorum for the Advisory Board and will be able to approve all actions of the Advisory Board.

82 As a result, the Applicant asserts that, although it is willing to recognise the appointment of Mr Katz as a non-voting member of the Advisory Board, any action, vote or exercise of power by Mr Katz as a member of the Advisory Board shall be deemed invalid and will be challenged on the basis that it constitutes a breach to the Shareholders' Agreement and unfairly prejudices the Applicant's interests.

83 The Company refusing to take action to establish the status of Mr Katz as a non-voting member of the Advisory Board is yet further evidence of unfair prejudice against Applicant as a minority shareholder.

Insufficient responses to Information Requests

84 For the reasons outlined above, the Applicant has become increasingly concerned with regards to the value of its shareholding in the Company over time due to, *inter alia*: (i) the refusal of the Company to distribute cash on hand and to take action against U.S. Bank: (ii) the apparent conflicts of interest of the Company with respect to Acis and the HCM Shareholders, made plain by (a) the Intervention Submissions (by which while the Company seeks to take action against NexPoint, it refuses to seek direct relief against U.S. Bank), and (b) the Buy-Back Proposal (defined and discussed more fully below), which sought to prefer the HCM Shareholders by the implicit threat to maintain a refusal to distribute cash assets unless Applicant would submit to a 15% discount on cash, which would inure to the benefit of the HCM Shareholders in an unwarranted amount approaching $6 Million (counting the Applicant's share of the Redemption Proceeds, which the Company would doubtless receive immediately upon Applicant agreeing to the Buy-Back Proposal); and (iii) the Company's refusal to abide by the above described corporate documents regarding the non-advisory role of Mr. Katz.

85 As a result of the failure to take action against U.S. Bank, and as well the status of Mr. Katz (and for other reasons previously mentioned in other correspondence), the Applicant and I sent various requests for information to the Company (both directly and through Ogier (Guernsey) LLP (**Ogier**) as the Applicant's advocates) in order for the Applicant and I to make an accurate evaluation of the impact of the investment and management decisions of the Company (and their advisors) on (i) the Company and (ii) the value of the Applicant's investment in the Company.

86 This is by virtue of both the implied information rights attaching to the Advisory Board, which are required to allow the members of the Advisory Board to make informed decisions, and

the express rights provided by the further assurance provisions of the Members' Agreement as set out in clause 16.1 of that agreement at page **358**.

87 On the basis of the rights and powers afforded to the Applicant in its capacity as shareholder and me in my capacity as member of the Advisory Board, during the period 21 July 2021 to 20 January 2022, the Applicant and I made a number of requests for further information to the Directors in respect of the Company and its activities, including:

87.1 what advice the Company received to support their view that the withholding of the Redemption Proceeds by U.S. Bank is illegal;

87.2 what action the Company has taken to secure the release of the Redemption Proceeds by U.S. Bank;

87.3 which entities and/ or individuals are currently acting as advisor to the Company, if any; and

87.4 what action the Company intends taking to preserve the value of the Company and of the Applicant's interest therein.

(the **Information Requests**).

88 I will now set out a summary of the relevant inter parties correspondence exchanged in respect of the Applicant's various concerns in relation to the conduct of the affairs of the Company as set out above in this affidavit and the Information Requests:

88.1 On 22 July 2021, the Applicant sent a letter to the Company raising its concerns in relation to the Unlawful Redemption Withholding. The Applicant requested information from the Company on what actions were being taken by it to release the Redemption Proceeds and requested the Company to take certain steps to resolve this issue (see a copy of this letter at pages **668 to 669**).

88.2 On 23 July 2021, the Company responded on a very limited basis to the Applicant's letter of 22 July 2021 providing that US Bank is holding reserves on account of pending and threatened litigation, including litigation filed by NexPoint and threatened litigation from the Applicant and Charitable DAF, and that it is "*currently consulting with legal advisor and the Fund's portfolio manager to determine the Fund's response to these events*" (see page **670**). Certain of the Company's legal advisors are counsel to HCM within adversarial action against Applicant in the HCM bankruptcy case (with respect to objection to the Applicant's proof of claim).

88.3 On 27 July 2021, the Applicant sent a letter to the Company confirming that it has neither commenced litigation against any entity in connection with the Acis CLOs or threatened litigation against any entity in connection with the Acis CLOs, and that lumping the Applicant with any other unrelated litigation is improper and no basis for US Bank to withhold substantial distributions owed to the Company. The Applicant added that even if such litigation was threatened (which it is not), this is still not basis for the Unlawful Redemption Withholding and also requested further details of the steps being taken by the Company to release the Unlawful Redemption Proceeds (see pages **671 to 672**). Again, we note that the Company has taken the position, within

the Nexpoint litigation, that such litigation is not grounds for withholding Redemption Proceeds.

88.4 On 20 October 2021, Ogier, acting for the Applicant, sent an email to the Company making a further formal request for the information required by the Applicant for it to make an effective assessment as to how certain matters raised in the redemption reports for each of Acis CLO 2014-4, Ltd., Acis CLO 2014-5, Ltd. and Acis CLO 2014-6, Ltd. and 2021 Interim Accounts impacts its interest in the Company, and in particular, Ogier directed several detailed questions to the Company on the issue of the Unlawful Redemption Withholding (see pages **673 to 674**).

88.5 On 26 October 2021, Carey Olsen, acting for the Company, sent the October 2021 Letter referred to above (see pages **647 to 649**), providing inter alia that US Bank's stated justification for retaining the Redemption Proceeds is premised on certain threatened litigation from the Applicant and presently filed litigation by NexPoint as an apparent affiliate of the Applicant. This is despite the fact that the Applicant had already confirmed in its letter of 27 July 2021 that it has not commenced litigation against any entity in connection with the Acis CLOs or threatened litigation against any entity in connection with the Acis CLOs. In the October 2021 letter Carey Olsen purported to provide responses to the questions posed by Ogier in its email of 20 October 2021, however it is clear that the responses provided were superficial, meaningless and evasive.

88.6 On 2 November 2021, (as mentioned above at para 75) the Applicant sent a letter to the Company and its other shareholders providing formal notice of my appointment as a voting member of the Advisory Board representing the Applicant pursuant to clause 4 of the Members' Agreement (see pages **659 to 660**).

88.7 Between 8 November 2021 and 3 December 2021, I on behalf of the Applicant made further concerted efforts to engage with the Directors of the Company and discuss the various issues, most importantly, the proposals in respect of the Applicant's exit from the Company. The full chain of emails at pages **650 to 656**) reflects inter alia that:

(a) On 9 November 2021 Mr Boléat responded to me on behalf of the Company providing that the Directors "*have nothing to add to the letter sent to Ogier on 26th October 2021*" (see pages **654 to 655**);

(b) On 10 November 2021, I sent an email to Mr Boléat requesting information and again confirming that I was not aware of the Applicant having threatened litigation which could have a bearing on the Unlawful Redemption Withholding. I also proposed an in specie distribution from the underlying assets of the Company to the Applicant in exchange for the Applicant's shareholding as a means to achieve the exit of the Applicant from the Company (defined below as the Redemption Proposal) (see pages **653 to 654**); and

(c) Mr Boléat responded on 3 December 2021 indicating that the proposal for an in specie distribution was rejected. The Applicant does not consider that any of the reasons advanced by the Company (dealt with below in the next section in respect

of the Applicant's exit proposals) are sufficient to justify rejecting the in specie distribution (see pages **650 to 651**).

88.8 On 11 January 2022 at 05.14pm, I sent an email to the Company, both in his capacity as a voting member of the Advisory Board and on behalf of the Company, requesting information and documents from the Company in relation to the matters set out above, namely the invalid appointment of Richard Katz to the Advisory Board, the intervention by the Company in the NexPoint Litigation, and the Acis Settlement Agreement with no commercial rationale, among other things. I also put forward the proposal for either a redemption and in specie distribution of the Applicant's interests in the Acis CLOs, or alternatively an arm's length liquidation of the Acis CLOs, in order to extricate the Applicant from the Company (see pages **713 to 715**).

88.9 On 20 January 2022 the Company responded to my email of 11 January 2022 again with limited and insufficient responses (see pages **709 to 711**).

89 Despite the repeated Information Requests, to date the Applicant and I have received limited and insufficient information from the Company through its Directors. Pursuant to clause 16 of the Members' Agreement (see page **358**), the Company will exercise all powers that it is able to procure that the provisions of the Members' Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the agreement. In breach of clause 16 of the Members' Agreement, the Company has refused to provide the necessary information to me and the Applicant in spite of my position as the sole voting member of the Advisory Board and the Applicant's rights as shareholder.

90 Therefore I cannot effectively fulfil my role on the Advisory Board as representative of the Applicant as shareholder and the Applicant is unable to make informed investment decisions relating to its shareholding in the Company. In this way, the Company, acting through its Directors, has displayed both a lack of regard for the Applicant's rights and interests in the Company as shareholder as well as my role on the Advisory Board, which is a mandatory and important part of the checks and balances required for proper governance under the Articles.

91 Principle 8 of the Code indicates that the Directors should *"...ensure that satisfactory communication takes place with shareholders and is based on a mutual understanding of needs, objectives and concerns"* and that the Directors *"...should ensure the provision to shareholders of adequate information on which they may base informed decisions"*. Although the Directors have committed to complying with the Code, the actions of the Directors in failing to provide the Applicant with the information it seeks results in the Directors failing to comply with the Members' Agreement, and failing to meet the standards required by Principle 8 of the Code in relation to shareholder engagement.

92 It is especially unfair to the Applicant that the Company refuses to provide the Applicant with information in circumstances where that information has likely been made available to HCM due to its close relationship with the Company. HCM is able to make informed investment decisions regarding its investment in the Company while the Applicant is unfairly not afforded the same rights.

The Company's Share Buy Back Proposal Establishes Unfair Prejudice

93 On June 28, 2022, HCLOF, through Chairman Boleat, sent a share buyback proposal (**Share Buyback Proposal**) to the shareholders (see pages **716 to 756**). In the Share Buyback Proposal, HCLOF referred to its policy for the previous two quarter-ends (December 2021 and March 2022) of returning excess cash from investment proceeds to shareholders by way of dividend. During the second quarter of 2022, HCLOF monetarized its interests in MGM Studios equity, resulting in $38,274,397.88 of unencumbered cash. Citing to this cash, HCLOF stated that its board was able to offer shareholders the opportunity to sell their shareholdings back to HCLOF. While the cash was insufficient to buy back all outstanding shares, the HCM Shareholders had previously indicated to HCLOF that they would not enter into a buyback transaction.

94 Therefore, HCLOF offered to buy back all of CLO HoldCo's outstanding shares (on an all or nothing basis). HCLOF clarified that any offer would reflect the advantages conferred upon shareholders, the loss of use of funds by HCLOF, and removal of risk. To reflect this, the Share Buyback Proposal offered to buy all of CLO HoldCo's outstanding shares at 85% of the May 2022 NAV (55.53 cents per share), being 47.20 cents per share.

95 In response to the Share Buyback Proposal, on 7 July 2022, CLO HoldCo, through counsel, sent a Response to the Share Buyback Proposal (**Response**) (see pages **757 to 758**). In the Response, first, CLO HoldCo noted that the Share Buyback Proposal was discounting 15% on cash, and therefore, there was no material risks or uncertainties justifying discounts. Second, CLO HoldCo also cited the impropriety of holding such significant cash reserves where HCLOF is in wind down and not actively trading. Further, CLO HoldCo stated that it was clear from the Share Buyback Proposal that HCLOF had previously discussed the details of a proposed buyback with the HCM Shareholders in advance of making the Share Buyback Proposal to CLO HoldCo, which again evidences HCLOF's preference for the interests of HCM Shareholders over CLO HoldCo. Finally, in making the Share Buyback Proposal without consulting with CLO HoldCo, HCLOF improperly incurred administrative expenses.

96 As such, given HCLOF's improper holding of significant cash and seeking to impose the unwarranted and prejudicial 15% discount (on some $78 Million in cash either on hand or in the form of Redemption Proceeds); taking no action and refusing to disclose what action it has taken against US Bank; and having an inappropriately close relationship with the HCM Shareholders as evidenced by the assertions herein, and the culminating prejudicial Company Share Buy-Back Proposal, CLO HoldCo rejected the Share Buyback Proposal.

97 On 15 July 2022, Carey Olsen sent a letter to Ogier on behalf of the Respondent, responding to Ogier's letter of 7 July 2022, a copy of which is at page **759**. The Company's response was essentially non-responsive (as it had no real response to the mathematical certainly of the undervaluation of the Share Buy-Back Proposal). Unable to refute the rejection letter, the Company resorted only to a single sentence -- "*The various allegations made in that letter are wrong.*" The Company also relied on a logical fallacy by accusing the Applicant of inconsistency by expressing willingness to discuss reasonable proposals while simultaneously having no real alternative but institution of Unfair Prejudice proceedings. Of course, as established here the Company has been unwilling to even consider, much less discuss reasonable proposals. It has only been willing to engage in

refusal to provide information, refusal to take proper action to recover Company funds, refusal to make fair distributions; and it has been willing to traffic in the undervalued Share Buy-Back Proposal, requiring under threat of further unfair prejudice, a discount of 15% on cash for the benefit of the HCM Shareholders.

Applicant's Alternative Exit Proposals

98 Applicant has made alternative proposals, the Redemption Proposal and the Alternative Share Buy-Back Proposal (collectively the **Applicant Exit Proposals**), an outline of which, along with explanatory positions is attached at pages **760 to 764**.

99 The Redemption Proposal was previously advanced by the Applicant to the Company by written correspondence on 10 November 2021 at pages **653 to 654**, on 3 December 2021 at page **650 to 651** and again on 11 January 2022 at pages **713 to 714**, and was rejected each time by the Company for the following reasons:

(a) The in specie distribution would result in the Company's position in respect of its intervention in the NexPoint Litigation being compromised;

(b) It is not clear that the in specie distribution would be feasible as the CLO indentures would need to be reviewed to determine whether in-kind distributions to the relevant transferees are compatible with all relevant terms, and the Company would also need to ensure that each of the Company's shareholders are able both to receive and then hold the CLOs in question (either from a tax/regulatory perspective or based on the terms of the CLOs themselves);

(c) The Company's structure has a history of hostile litigation that has had a serious impact on the Company's interests over the years, and the Company has concerns that any changes to the status quo might prompt further contentious activity, potentially involving the Company, that would be damaging and costly for all parties.

100 In response to the first reason, in the interests of resolving the ongoing disputes the Applicant would be amenable to agree to vote in conjunction with the Company in respect of the voting rights attaching to those CLOs represented in the assets distributed to the Applicant pursuant to the Redemption Proposal.

101 The Applicant does not agree that the Redemption or the Share Buyback would not be feasible as the transaction would be compatible with all relevant terms of the CLO Indentures. In fact, the Applicant is willing upon direction of the Court to obtain an independent opinion from an established expert in the field of CLO structure management and operations that indicates that the Redemption Proposal would be administratively simple and would also not impact the value of the CLO positions of the Company as a whole or prejudice the remaining Shareholders.

102 On 30 March 2022, the Applicant's advocates, Ogier, sent a letter to the Company (see pages **765 to 776**) setting out the Applicant's concerns (in line with what is in this affidavit above) and proposing either of the Applicant Exit Proposals as a means to secure a mutual separation between the Applicant, HCM and the Company. In sending the Applicant Exit Proposals, the Applicant aimed to encourage negotiations between the parties and the fact that the Applicant put forward more than one exit proposal in the Applicant Exit Proposals

reflects that it sought to be reasonable and flexible in its approach. The Applicant is of the position that either of the Applicant Exit Proposals would be effective in resolving the disputes between the parties as both are fair, practical and reasonable and will not prejudice any party.

103 On 14 April 2022, the Company's advocates, Carey Olsen, sent a letter responding to the letter from Ogier dated 30 March 2022, a copy of which is at pages **300 to 306** (the **Response to the Applicant Exit Proposals**). The Company has responded to each of the Applicant Exit Proposals as follows:

"*A redemption of shares in the manner proposed in your letter is not possible pursuant to the Company's articles of incorporation (the "Articles"). The Articles only permit a redemption pursuant to article 9 thereof, which permits the board to compulsorily redeem shares in accordance with the Members' Agreement (as defined therein). The Members' Agreement only permits redemption in accordance with clause 5.5 which permits the Portfolio Manager, on behalf of the Company, to elect, upon notice to a Defaulting Member to redeem the Defaulting Member's shares in an amount equal to 50% of the outstanding amount existing as of the date of the default at a price of $0.0001 per Share (all capitalised terms as defined in the members' Agreement).*

Pursuant to clause 3.2.3 of the Members' Agreement, any redemption other than pursuant to clause 5.5 requires the affirmative vote or prior written consent, as applicable, of the Members totalling in the aggregate more than seventy five percent (75%) of the Company. It would also require an amendment to the Articles, which requires special resolution approval.

With respect to a buyback, which requires ordinary resolution approval of the terms of the relevant buyback contract, pursuant to section 314(5) of the Companies (Guernsey) Law, 2008 (as amended), your client is precluded from voting its shares.

…

In principle, the Directors would be willing to engage U.S. and Guernsey counsel to review those matters, provided that HCM and its affiliate, HCMLP Investments, LLC (collectively, the "HCM Shareholders"), who collectively own more than 50% of the Company's shares, are agreeable to voting for, or to considering voting for, either of your proposals. As you will appreciate, ***if the HCM Shareholders are not agreeable to supporting one of those proposals, neither is viable*** *– and time and costs incurred in considering these matters further would be wasted. The Directors, having approached the HCM Shareholders to consider these options, can confirm that they are not agreeable to giving their support, or to giving further consideration to the same…."* [emphasis added]

104 The Company has not provided any proper or specific legal or technical basis for its refusal of either of the Applicant Exit Proposals. There is also no indication that the Company has properly canvassed either of the Applicant Exit Proposals internally or with the HCM Shareholders, which would necessitate circulating a shareholders resolution to the HCM Shareholders with a formal request for approval of either of the Applicant Exit Proposals. This would be easy, inexpensive and not time-consuming. The Company does, however,

make clear with the Share Buy-Back Proposal, its intention to further effect unfair prejudice upon Applicant.

105 It is apparent that the Directors of the Company have held discussions with the HCM Shareholders (without the Applicant's input) in respect of the Applicant Exit Proposals, and as well the Share Buy-Back Proposal (designed to promote the interests of the HCM Shareholders to the detriment of Applicant as minority shareholder). The interests of the HCM Shareholders as a collective majority shareholder are blatantly being preferred by the Company over the interests of the Applicant as minority shareholder (there is simply no conceivable justification for an offer requiring a 15% discount for cash).

106 As no counter proposal has been offered by the Company pursuant to its discussions with the HCM Shareholder, whether in the form of a proposed amendment to the terms of the Applicant Exit Proposals or otherwise, except for the unwarranted and unfairly prejudicial Share Buy-Back Proposal, it is clear that neither the Company nor the HCM Shareholders have bona fide intentions of trying to resolve the disputes and secure a solution for the Applicant's request to exit from the Company.

107 The Response to the Applicant Exit Proposals is the latest in a substantial amount of correspondence which the Applicant has directed to the Company in order to raise its concerns and seek to agree an amicable resolution through various proposed solutions. The Company has refused to engage in any constructive discussions regarding the exit of the Applicant from the Company despite the various proposals made to resolve the issues and therefore the Applicant, and therefore Applicant has been left with no option other than to approach the Royal Guernsey Court for the necessary relief.

108 In an attempt to appear reasonable, the Company on 15 July 2022 sent a letter advising that the Share Buy-Back Proposal had not been approved by the requisite percentage of shareholders (which was self-evident, as Applicant rejected it), and as well a notice of intention to issue a dividend to shareholders (see pages **777 to 778**).

109 The proposed dividend is $14.73 per share, despite the Company being willing to use in excess of $47.20 per Applicant share to pay the Share Buy-Out Proposal amount. This indicates an unfair retention of cash, as the Company was willing to part with close to 90% of its unencumbered cash for the Share Buy-Out Proposal, but now needs to retain in excess of 40% of unencumbered cash, for no discernible reason.

110 Applicant advised the Company of its intention to proceed with the Application in the Royal Guernsey Court for relief including that mentioned above at Sections 12 and 13, and otherwise described within the Application.

111 Applicant reserves all rights to amend, to seek additional relief to which it might be entitled, as could bring to resolution the continuing unfair prejudice being imposed upon Applicant as a minority shareholder.

Conclusion

112 For the reasons set out above, the actions of the Company are such that the Applicant's rights as shareholder are being ignored and the Applicant continues to be unfairly prejudiced as minority shareholder. The manner in which the Company is currently being

managed is not in the interests of all shareholders and in fact that the Company has engaged in conduct that is pointedly prejudicial to the interests of Applicant as minority shareholder. Applicant's shareholding in the Company has become untenable. This is unfairly prejudicial and necessitates court intervention in the form of the Application.

113 The Applicant has provided the Company with several opportunities to justify the various actions they have taken which are the subject of the Applicant's concerns, in order for it to better understand the Company's position and rationale. However the Company has largely refused to answer the requests for information and where information has been provided, it has been very limited and insufficient.

Notice

114 Required proceedings, if necessary, have been undertaken in the Bankruptcy Court.

115 The Company has been notified of the filing of the Application and will be notified of the date, time and place of the hearing of the Application in accordance with section 349(4) of the Companies Law. The HCM Shareholders have been provided a copy of this Affidavit and Application and notified that CLO HoldCo would be commencing this proceeding.

Directions and Orders Sought

116 I humbly request that the Court makes the directions and orders sought in the Application.

SWORN by the said
PAUL RICHARD MURPHY
At
on 7TH MARCH 2023

Before me,

.....

~~Solicitor~~/Notary Public

Anthony Partridge
Notary Public in and for the Cayman Islands.
My commission expires on January 31, 2024
Date: 7 MARCH 2023

Sworn by: PR Murphy
For: Applicant
Number: First
Exhibit: PRM1

Ogier (Guernsey) LLP
Advocate Alex Horsbrugh-Porter

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

IN THE MATTER OF PART XIX OF THE COMPANIES (GUERNSEY) LAW, 2008

BETWEEN:

CLO HOLDCO, LTD

Applicant

and

HIGHLAND CLO FUNDING, LTD

Respondent

EXHIBIT PRM1

This is the Exhibit PRM1 to the First Affidavit of Paul Richard Murphy sworn on 7th MARCH 2023 consisting of 752 pages including this page

Before me,

.....

~~Solicitor~~/Notary Public/~~Advocate~~ of more than 5 years' call

Anthony Partridge
Notary Public in and for the Cayman Islands.
My commission expires on January 31, 2024
Date: 7 MARCH 2023

EXHIBIT 78

TRAVIS J. ILES
SECURITIES COMMISSIONER

CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

May 9, 2023

Dan Waller, Esq.
Glast, Phillips & Muarry
14801 Quorum Drive, Suite 500
Dallas, TX 75254

Sent via e-mail to DWaller@gpm-law.com

RE: Complaint Filed

Dear Mr. Waller:

The staff of the Texas State Securities Board (the "Staff") has completed its review of the complaint received by the Staff against Highland Capital Management, L.P. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.

If you have any questions regarding the foregoing, please contact me via e-mail at cedgar@ssb.texas.gov.

Sincerely,

Clint Edgar
Deputy Securities Commissioner

EXHIBIT 79

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

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Tuesday, February 23, 2021 9:00 a.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES D. DONDERO, Defendant.	**Adversary Proceeding 20-3190-sgj** PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48]
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al., Defendants.	**Adversary Proceeding 21-3010-sgj** DEBTOR'S EMERGENCY MOTION FOR MANDATORY INJUNCTION REQUIRING THE ADVISORS TO ADOPT AND IMPLEMENT A PLAN FOR THE TRANSITION OF SERVICES BY FEBRUARY 28, 2021 [2]

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

WEBEX/TELEPHONIC APPEARANCES:

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THE COURT: This is Judge Jernigan, and we have Highland settings this morning. We have a couple of settings in adversary proceedings, one in Adversary 21-3010, Debtor's Emergency Motion for a Mandatory Injunction Requiring the So-Called Advisors to Adopt and Implement a Plan for Transition of Services; and then, second, in Adversary 20-3190, a Motion to Hold James Dondero in Contempt for Violating a Previous TRO, allegedly.

So, let's go ahead and get our lawyer appearances. First, for the Debtor, Highland, who is appearing this morning?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz and John Morris of Pachulski Stang Ziehl & Jones. Mr. Morris will be handling the hearings today.

THE COURT: All right. Thank you.

All right. For the Advisors, who do we have appearing?

MR. RUKAVINA: Davor Rukavina and my co-counsel, Lee Hogewood. We are appearing for the two Defendants in Adversary Proceeding 21-03010. We are not appearing in the other adversary and contempt matter.

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

MR. WILSON: Your Honor, John Wilson with the law firm of Bonds Ellis Eppich Schafer Jones. And with me is Bryan Assink.

(Interruption.)

THE COURT: All right. I didn't hear what you said, Mr. Wilson, after appearing for yourself and Mr. Assink. Would you repeat that?

MR. WILSON: That was all I said, Your Honor. I don't know what that other noise was.

THE COURT: Oh, okay.

(Court confers with Clerk.)

THE COURT: Okay. Someone came in as a PC user, is what my court reporter said.

All right. Well, do we have the Committee appearing today?

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

THE COURT: All right. Thank you.

All right. Well, that's all the appearances I will ask for right now. I know we have interested observers, parties in interest observing today.

Mr. Morris, how did you want to proceed this morning?

MR. MORRIS: John Morris; Pachulski Stang Ziehl & Jones.

What I thought we'd do, Your Honor, is begin with the Debtor's Motion for the Mandatory Injunction. I thought it would -- may make sense to begin with some opening statements and proceed right to the evidence. The Debtor has two

witnesses to call, Mr. Seery and then Mr. Dondero. And then we would rest after the admission into evidence of our exhibits. The Advisors, you know, can certainly cross-examine Mr. Seery. You know, and then we'll have closing statements and hopefully finish that part of the proceeding up.

And then we'll move on to the contempt proceeding. Mr. Dondero has a motion *in limine* to exclude certain evidence. The Debtor has agreed -- I don't know if I've seen an order from the Court -- but the Debtor has agreed to have that heard today, if Your Honor would like to do that. The Debtor is certainly prepared to argue that motion prior to the commencement of the contempt proceeding. And then after that motion is decided, we could just do the same drill: Some opening statements, hopefully hear from a few witnesses, put in our evidence, and finish up.

THE COURT: All right. Well, that was the sequence I had envisioned. Since you're looking for an injunction, you know, immediately, you're wanting to transition services by February 28th, I thought that it made sense to take that one up first. So, with that, I'll hear your opening statement.

MR. MORRIS: Okay. Thank you, Your Honor.

MR. RUKAVINA: Your Honor, Davor Rukavina, briefly. I just would like for the record to be clear. Are we having a combined record for both adversaries, or is the -- first the one and then the other, which would be my strong preference?

THE COURT: No, I did not envision a combined record.

MR. RUKAVINA: Okay.

THE COURT: Mr. Morris, was that what you were suggesting and I didn't understand?

MR. MORRIS: No.

THE COURT: No, he was not.

MR. MORRIS: Not at all.

THE COURT: Okay. So we're just --

MR. RUKAVINA: Okay. Thank you.

THE COURT: -- focusing on the Advisor-Debtor dispute this morning with the evidence. Okay.

Mr. Morris, go ahead.

MR. RUKAVINA: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Okay. Thank you, Your Honor. John Morris; Pachulski Stang Ziehl & Jones.

Before I begin, I just want to tell the Court that the lawyers -- this has been a very difficult week. We had three depositions yesterday. And I just, I think it's important for the Court to know that the lawyers have cooperated really quite well. It's difficult circumstances. Not every conversation is polite and perfect. But for Your Honor's purposes, I do appreciate everybody's cooperation getting to this point.

THE COURT: Well, I'm glad you told me that, because

I was wrongly thinking I might hear this morning that you all worked it out overnight.

MR. MORRIS: No.

THE COURT: I will let you know, I cannot for the life of me figure out why this couldn't be worked out, but I'm going to hear the evidence and argument and better understand that, I guess.

MR. MORRIS: You are. And let me try to explain that. And what I'd like to do in my opening is just give you some background as to how we got here, what the Debtor's interest was in bringing the motion, and what the Debtor is seeking from the Court today. And I think, with that, perhaps we'll fill in any of the blanks that may be appearing on your page.

THE COURT: Okay.

MR. MORRIS: And I think the best place to start, Your Honor, is just -- I know that the Court is familiar with the relationship of the parties, but for the record in this particular case I think that it's important to just put that out there. I've got a small demonstrative deck that I think would be helpful, and I would just ask that we put up on the screen --

THE COURT: All right.

MR. MORRIS: -- the first slide of the deck.

THE COURT: Okay.

MR. MORRIS: And this slide, Your Honor, you'll hear testimony and I don't think there will be any dispute about the substance of this particular slide. But as Your Honor is aware, HCMLP, the Debtor, has certain shared services agreements with the two Defendants here that are the two Advisors. That's HCM Fund Advisors, NexPoint Advisors. Pursuant to those shared services agreements, the Debtor provided certain back- and middle-office services. And the shared services for purposes of this hearing contain some very important termination clauses.

The evidence will show that the Advisors provide advisory services to certain investment funds. There's about ten or twelve investment funds to which they provide advisory services pursuant to these advisory service agreements. Some of those funds are publicly traded. As Your Honor has heard previously, some of those funds have thousands of individual investors, mom-and-pop investors and retail investors. So that is the -- kind of the -- how this all fits together, and we'd just like to keep that in context.

The agreements themselves, as I mentioned, have certain termination clauses.

If we could just go to the next slide, please.

The agreement between the Debtor and Highland Capital Management Fund Advisors had their shared services agreement, and you can see in the footnote where I cite to the exhibit.

This is Debtor's Exhibit 2 that appears at the adversary proceeding Docket No. 10. It's a very straightforward termination clause. It's a clause that says the agreement is for a period of a year, with automatic renewals. And then Section 7.02 provides that either party may terminate this agreement with or without cause upon at least 60 days' written notice.

If we could go to the next slide, you'll see that this is the excerpt from the NexPoint Advisors shared services agreement. And this provision is slightly different because it requires only 30-day written notice. That -- and that particular agreement can be found at Debtor's Exhibit No. 4.

So that's kind of the nature of the parties and that's the important part of the agreement, at least from the Debtor's perspective.

And how does this -- how is this all particularly relevant today? The Debtor filed for bankruptcy back in October of 2019. As the Court is aware, Mr. Dondero was in control of both the Debtor and the Advisors at that time. The Advisors had certainly prior notice that the Debtor would be filing for bankruptcy. And indeed, I think you'll hear some testimony today from Dustin Norris that the Advisors had begun to think about what would happen to the shared services agreements, you know, a year and a half ago, prior to the bankruptcy filing.

Fast forward to August, August of 2020. The Debtor had

been in bankruptcy at that point for about ten months. And if Your Honor will recall, at around that time the Debtor filed its first plan of reorganization.

And if we could just go to the next slide, please.

This was an important event for the Debtor at the time, because while the Debtor did not yet have the support of any meaningful constituency, it did make a public statement for the first time that unless executory contracts were assumed or otherwise treated in the manner provided in Article 5 of the plan, they would be deemed rejected. So, as of August 2020, this was the marker that the Debtor laid.

And certainly, discussions continued about a potential grand bargain. You've heard a lot about that. They morphed later on into discussions about a pot plan. But for purposes of, you know, public disclosure, there is no question that by August 2020 everybody should have been on notice that, in the absence of an assumption of the executory contracts, they would be deemed to be rejected.

You'll hear from Mr. Seery today. Mr. Seery will testify as to the events that took place in the weeks following the filing of this document. He'll -- he will describe for you at a high level but just in general how the parties began discussing the possibility of a transition of services agreement, the form of which was not certain at the time. There were a couple of possibilities, including a Dondero-

related entity taking it over. There was the possibility of a -- what's been referred to and what will be referred to as Newco, which was going to be a new entity formed by some of the Debtor's employees upon consummation of the plan. I think there was discussion about the possibility of just leaving things in place if somehow a grand bargain could be achieved. But discussions ensued in the fall.

And as Your Honor will also recall, you know, we had the mediation. The mediation wasn't successful in resolving the grand bargain. The mediation did result in the agreement with Acis, and that's when, you know, tensions began to increase with Mr. Dondero and the board.

Mr. Seery will testify that through the fall, while discussions continued, you know, it became a little bit more -- it became a little bit more difficult. And Your Honor will recall that in October the board asked for Mr. Dondero's resignation, which he complied with, pursuant to the corporate governance provisions.

But it was in this time that Mr. Seery will also testify that Mr. Dondero made it clear, in a call that there were numerous people on, that if, you know, we could get to a grand bargain, that would be great, but if that we couldn't, nobody should assume that the transition of services would be easy.

Now, you know, Mr. Seery will testify that he found that interesting because the transition of services really should

have been more of the Advisors' concern than the Debtor's, but it was a point that Mr. Seery noted, and he'll tell you about.

By November, the Debtor had reached a consensus with the Creditors' Committee on the formulation of a plan. If you'll recall, in late October, there was a contested disclosure statement hearing during which the Committee objected to the releases and to certain corporate governance provisions. And those -- those objections led to negotiations, and those negotiations led to an amended plan, which was the Third Amended Plan.

And if we could go to the next slide, this is also, from our perspective, an important marker in the narrative here, because in mid-November, we'd gone beyond just saying that if the contracts aren't assumed they would be deemed rejected to making a public statement that shared services agreements are not going to be assumed. And they're not going to be assumed because they're not cost-effective. And Mr. Seery will testify as to why the contracts were not cost-effective. But there was no doubt by mid-November that the contracts weren't going to be assumed by the Debtor.

A couple of weeks later, to remove any doubt, the Debtor exercised its right under the shared services agreement and gave notice of termination.

If we can go to the next slide, please. You'll see in this, in this slide, you've got -- yeah, there you go.

There's a letter dated November 30th. And this can be found, this is Debtor's Exhibit 3. There is a letter notifying the Fund Advisors that the Debtor intended to terminate the shared services agreement on January 31, 2021. In other words, the Debtor gave the 60-day notice that we just looked at under the shared services agreement of its intention to terminate the shared services agreement.

Can we go to the next slide, please?

On the same day, the Debtor also gave notice of its intention to terminate the shared services agreement with NexPoint Advisors. And I would note that, notwithstanding the fact that the shared services agreement with NexPoint Advisors only required a 30-day notice period, the Debtor, in fact, gave 60 days' notice, just to keep them on the same track.

And as Your Honor knows, in the subsequent weeks, the Debtors pushed ahead with their plan of reorganization. They amended it a couple of times. Those amendments didn't have anything -- have any impact on the termination notices. You'll hear no evidence today that the Debtor rescinded the termination notices. You'll hear no evidence today that the Debtor ever considered rescinding the termination notices.

And so we fast-forward now a couple of months later to January, and what's happening? Mr. Seery will testify that, you know, the Debtor really was using its best efforts to try to engage, to try to finish this up. And he'll tell you what

the Debtor's motivations were here. While the Debtor doesn't owe any obligations directly to the Funds, while the Debtor doesn't owe any obligations directly to the retail fund investors, the Debtor was very, very concerned that it be able to implement its plan of reorganization. And that plan of reorganization, which Your Honor just approved very recently, and in fact entered the order yesterday, pursuant to that plan the Debtor is going to and has begun the process of downsizing substantially. And they were going to eliminate a lot of the employees, and they knew in January that there was no way the Debtor was ever going to have the ability to provide any services at any time after February 28th. I mean, they gave notice of January 31st.

So, the Debtor wanted to make sure that it could proceed in the future without any obligation, without any claim that there's obligations. So the Debtor was really focused on trying to try to finish up this transition services agreement. And the negotiations picked up a little bit in late January, but here we were, with a January 31st deadline, and the Debtor -- the Debtor [sic] asked for an extension of time. And the Debtor [sic] asked for an extension of time presumably because they weren't prepared to assume the back-office and the middle-office services that the Debtor was providing.

And so the Debtor agreed and the parties agreed, pursuant to a written agreement, to extend the deadline by two more

weeks. And the parties continued to negotiate during those two weeks, but there were difficulties. And threats were made. And Mr. Seery will testify that those threats caused the Debtor to insist that the negotiations basically be chaperoned by outside counsel.

It didn't last long. It was really just for the purpose of trying to get the temperatures down to a degree where people could engage in a more cooperative fashion. But that's what we were dealing with in late January and early February. We couldn't get to yes.

And parties negotiated. Terms sheets went back and forth. You're going to hear this testimony, not from Mr. Seery, but you'll hear it, ironically, from the Advisors, that last week an agreement was reached. The only sticking point was Mr. Dondero's insistence that he be permitted access to the Debtor's offices. It is the only thing that prevented the parties from reaching an agreement.

And they say that the Debtor was unreasonable in not allowing him into their offices. And Mr. Seery will testify that we'd already been through this process, that we'd already obtained a TRO, that we'd already obtained a preliminary injunction that bars him from the offices, and we just, admittedly, we would not agree to that provision. But we would not be here today if the Advisors simply said, we'll leave that for another day, we've been operating for two

months without Mr. Dondero in the offices, we've otherwise got an agreement that accomplishes everything we need to do. Instead, they said no.

And here's another interesting point. You're going to hear the testimony from Mr. Norris, and he's going to tell you that the so-called independent boards of the funds, they were fully supportive of the Advisors' position. They thought that it was a really smart idea to walk away from a fully-negotiated transition services agreement because the Debtor wouldn't let Mr. Dondero into the office. They thought that was a great idea and they fully supported it. Nobody -- none of the board members are going to be here today to testify to that, but Mr. Norris is going to -- I'm going to make sure that Mr. Norris informs the Court that that was the boards' view.

And so, instead of saying yes, they said no. And we had told them last Tuesday, if you don't agree to this, we're going to commence the lawsuit. So they didn't agree to it, so we commenced the lawsuit.

But negotiations continued. And you know, I think the lawyers for the Advisors acted in very good faith here, Your Honor. They did the best they could. We continued to negotiate. On Friday, they presented to the Debtor two options, Option A and Option B. And at one point, they said, we're not -- we may have to tweak Option B, so hold off for

now. And you're going to see this in the emails. It was just black and white. And we said okay, fine. And then they came back and they said no, no, no, Option B is good, Option B is good, so tell us what you want to do. And at 1:00 o'clock on Friday, there was a phone call. The Debtor informed the Advisors' lawyers that they choose Option B. We're done. And we started talking about wire transfers. We started talking about documenting this for the Court in a consensual order. And we would be done.

And we had a call scheduled, I think at first at 3:30. Again, this will be -- this will all be in the evidence. This is what the evidence is going to show. We had a call at 3:30. They asked for an extension of time. Then they told us they were trying to get the consent of the person whose consent they needed. They pushed it off further. And then, you know, then we got the bad email from Mr. Hogewood that said, we're not going to have a group call, I'm just going to call by myself. And we knew what that meant.

And so he called up. He informed the Debtor that Plan B was off the table, the one that we had just accepted like for the second time. So Plan B was now off the table, and we said, we're done. I mean, we can't continue to negotiate this.

A couple of hours later, they send an email and they say, Plan B is back now on the table, but we're taking back the

million dollars that we had previously agreed to. And we said, no, thank you.

They continued to make offers over the weekend, Mr. Seery will testify, offers pursuant to which they were seeking I think what they called the *a la carte* services from the Debtor. And we weren't able to reach that agreement. And, again, I think what Mr. Dondero is going to tell you, Your Honor, is that -- well, you're going to hear two different stories, actually. Mr. Dondero is going to tell you that when we wouldn't let him back in the office on Tuesday, he disengaged. So he didn't -- he didn't really care. He didn't really have anything to do with it. He doesn't know what plan the Debtor has today. He doesn't know how the services are being transitioned. He really doesn't know anything after last Wednesday as regards to this matter.

But Mr. Norris will tell you that it was, in fact, Mr. Dondero who pulled Plan B on Friday afternoon because he didn't understand it. There was a misunderstanding, they said, even though Mr. Dondero will tell you that he specifically authorized Mr. Norris and D.C. Sauter to negotiate the agreement. Okay? That's a -- it's not a pretty story. I don't know that there's going to be a lot of dispute about the facts, to be honest with you, because they're reflected in documents. This is as much a document case as it is anything else.

So, you know, where does that leave us? Because there are certain developments that have happened in the last 24 hours, you know, that I'll -- that guess I'll share with you now. We did take discovery yesterday. As I mentioned, we did have a number of depositions. And during one of those depositions, Mr. Norris disclosed that the Advisors do, in fact, have a plan, or at least they assert that they have a plan. And the plan has, I think, what I would characterize as four legs to it.

Number one is they hired yesterday on a contract basis somebody to perform audit and accounting services. I think his name is Mr. Palmer. And he started yesterday.

They took in-house the payroll issues and are utilizing -- to supplement that, they're now going to utilize a firm called Paylocity. And Paylocity is a firm that the parties use regularly now. So that's the second leg of their plan.

The third leg is an IT company called Siepe. I think Siepe is run by a former Highland employee. And Siepe will provide -- and I think Mr. Norris is going to testify -- has been providing for a couple of weeks on a shadow basis certain IT functions.

And, finally, they're still trying to negotiate with Newco. Newco would be the entity that would be formed with some of the Highland employees. But those negotiations aren't finished.

So, I appreciated the objection that was filed yesterday. They basically said that this is moot, that they've got a plan, so there is nothing for the Court to do. We still have concerns. I think Mr. Seery will testify as to those concerns.

But it does -- it does go, you know, much further than we thought, even though it was just adopted. I mean, I guess the lawsuit had its intended effect, and in the last 24, 48, 72 hours, they're -- they're engaging in the process of transition.

So, you know, why are we here and what are we hoping to accomplish now that we've gotten news of that development? I think it's pretty simple, Your Honor. We simply want the Court to make sure that the Debtor is protected here, that the Debtor -- that there is a plan in place pursuant to which the Debtor will not be obligated to provide any services and it will be allowed to implement its plan in a way that not only protects the Debtor but really will protect the public marketplace, it will protect the funds and the investors, and, frankly, the Advisors as well.

We wanted this to be a smooth transition. We tried very hard to make it a smooth transition. Unfortunately, that didn't come to pass. But we do believe that the Debtor needs the comfort of an order.

And the Advisors are simply wrong in their papers when

they say we're asking the Court to dictate terms. I don't care if they have an agreement with the Debtor. I don't care who they have an agreement with. I don't care what the agreement says. I don't think the Court has to order any particular terms. We just want to make sure that they have a plan in place and that plan is implemented before the end of the month, because we will not be able to do anything for them after that time.

Thank you very much, Your Honor.

THE COURT: Thank you. Mr. Rukavina?

MR. HOGEWOOD: Good morning, Your Honor. Lee Hogewood. I'm going to take on the opening statement, if the Court please.

THE COURT: All right. Thank you.

OPENING STATEMENT ON BEHALF OF THE ADVISOR DEFENDANTS

MR. HOGEWOOD: And let me, let me begin by saying that I agree with Mr. Morris that counsel, I think, have cooperated throughout this process. And I also -- and in particular thank them for asking that the hearing be pushed back for 30 minutes, which was at my request, as an earlier start.

One other housekeeping matter that I would like to request is I will not have a further speaking role after the opening statement, and if it would be permissible for me to listen to the rest of the hearing by telephone, that would be much

appreciated, if there's not an objection to that.

THE COURT: All right. I assume there's no objection.

MR. MORRIS: No.

THE COURT: All right. Permission granted.

MR. HOGEWOOD: Thank you, Your Honor.

I think the theme of perhaps this hearing is a theme of divorce. It's a divorce that is long overdue. The lawsuit filed last week, it seems to be an effort of one of the divorcing parties, the Debtor, to employ the power of this Court to be sure that the Debtor is absolved of all consequences of the divorce.

Divorces are often messy. This one is particularly so. Presently, I think there are three or four other adversary proceedings among these parties that will have to be sorted out over the coming many months.

But on the issue before the Court today, the Advisors need very little from the Debtor in this divorce in the final analysis, other than access to data and books and records that the Advisors own and which will remain on formerly-shared systems.

To carry the divorce analogy further, like many divorcing couples, there are so-called children at risk. In this case, the children are the employees of the Debtor, the Advisors, the funds and their investors.

The Debtor's other purpose seems to be that they -- to be absolved of responsibility for the children. And just to be clear, the Advisors need no child support from the Debtor for the funds or others beyond the access to data, books and records that belong to our client and remain comingled with the Debtor's data.

But we didn't seek any relief. We are merely defending ourselves in this action. And I think what I say about what the evidence will show is not going to be altogether that different from what Mr. Morris has said. There's absolutely no dispute that the parties failed to reach an agreement. I also think there's no dispute that the parties worked diligently to reach one. They overcame very -- a large number of very difficult business issues to make the orderly transition happen. But in the end, they could not complete a deal.

And for the Debtor, you know, the question of who drew the hard line in the sand about no, I think we see it a little bit differently. For the Debtor, it would not agree for Mr. Dondero to have access, even if and only after the Advisors paid for the construction of a wall to segregate the remaining Debtor employees from Advisor employees and even if the Debtor employees had separate access to the Debtor's section of the premises, where the Advisors would be essentially subleasing the remainder of the space.

For the Advisors, the prospect of its leader, the leader of the enterprise, being prohibited from working in the same office as the employees of the Advisors made no business sense and was likely to become an ongoing logistical nightmare.

The gap could not be bridged in time, and so the Advisors moved out on the 19th, as directed by the Debtor.

As the Court knows, there's no provision in the Bankruptcy Code or any other statute that required these parties to agree on a transition of shared services. There's no legal obligation on either party to reach an agreement on how to divorce and separate. Neither can be compelled to reach an agreement if an agreement is not ultimately in their mutual respective business interests, as determined by each of them.

The Debtor claims to have terminated the contract pursuant to its terms. It amended the termination date twice in exchange for agreed advance payments to try to reach a deal.

In the meantime, the Advisors had to be aware of the possibility that a deal might not be reached, and so they began working in earnest on an alternative plan to be able to continue to service their clients, their funds and investors, as needed after the services were terminated.

So it is not clear exactly what the Debtors really seek here. A mandatory injunction to do what? To have a plan? The evidence will show, I think as Mr. Morris suggested, that our clients have a plan. It was implemented -- it began to be

implemented this past weekend, but it had been worked on for some time in advance. It's -- based on this, there's no jurisdiction for or purpose in a court order directing us to do that which we are determined to do anyway and have -- and have already done.

The evidence will show that there's no meaningful irreparable harm to the Debtor based on the current circumstances. Mr. Seery would be expected to testify, based on yesterday's deposition, of some vague notion of confusion among the employees, but there was no meaningful discussion of irreparable harm to the Debtor.

So the -- and, indeed, the confusion of the employees, in the context of a Chapter 11 debtor that has just confirmed a plan of liquidation, I think confusion could be -- the source of confusion could be a large number of things, not merely the transition issues.

To carry the divorce analogy further, the requested mandatory injunction is somewhat like requiring a divorcing spouse who has left the home to explain the details of his or her post-divorce life. And there's -- there's no purpose in that. In our papers, we've explained the lack of jurisdiction over this matter as a core proceeding, and certainly even under the related-to jurisdiction of the Court, as well as a constitutional -- lack of a constitutional basis for jurisdiction under *Stern v. Marshall*. And I know Mr. Rukavina

will take those issues up in his closing arguments.

We've also indicated -- made an arbitration demand, which is provided for under one of the two advisory agreements. And in the context of seeking, in this case, seeking a permanent injunction, as we stated in our papers, there's really no -- there's no proper exception from the arbitration demand.

So there's really, as we sit here today, there's really no case or controversy, and the timeline that Mr. Morris described is pretty much not in dispute. The evidence is going to show that there was a developing consensus among the business teams in January to meet a January 31 deadline with a transition. On January 27th, the -- 27, the Debtor demanded as a condition of transition nearly $5 million in what they allege to be postpetition underpayments under the shared services agreement. This was a new and difficult issue. The amounts, we're disputing. And the Debtor had not circulated a term sheet, only a proposed schedule of services. The term sheet came on the 28th.

On the 29th, we were able to agree to the first two-week extension to allow these discussions over a 13- or 14-page term sheet to be continued and discussed. That extension required the advance payment of an agreed amount to cover that two-week period of extension of services. Negotiations continued, as discussed, and a further extension through the 19th was granted.

Negotiations broke down at the time a suit was filed, and were renewed and ultimately broke down again, as Mr. Morris described.

In the end, the Court should dismiss the proceeding for lack of jurisdiction. The bankruptcy court is not a divorce court, nor is it a place where every perceived ill that the Debtor may incur may be resolved by injunction. The Court is, after all, a court of limited jurisdiction. If the Court does proceed, we simply ask that the claims be rejected and dismissed on the facts.

The Defendants have asked for nothing from the Debtor other than continued access to data, books and records to which they're entitled. We've moved out of the house. We have plans that will allow us to continue to serve our clients. And we would ask that you not order us to do so. Thank you.

THE COURT: All right. Well, I realize, you know, legal arguments have been hinted at here, and of course were briefed. I want to hear the evidence, and then we'll talk more about legal arguments at the close of the evidence.

All right. Mr. Morris, you may call your witness.

MR. MORRIS: All right. Your Honor, before I call my witness, I think just for efficiency purposes I would like to move my documents into evidence so that we don't have to do that on a document-by-document basis.

THE COURT: All right.

MR. MORRIS: And the Court will find -- unlike some of the prior proceedings, there actually aren't an overwhelming number. But the Court will find Exhibits 1 through 16 at the adversary proceeding docket, Docket No. 10, --

THE COURT: Uh-huh.

MR. MORRIS: -- the original witness and exhibit list that the Debtors filed. And then we added a few more documents I think late yesterday. There was a supplement that included Exhibits 17 through 21, and that can be found at the adversary proceeding Docket No. 19.

So the Debtor would respectfully move into evidence Exhibits 1 through 21 on those lists.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, I believe Mr. -- well, not necessarily an objection, Your Honor. I believe Mr. Morris and I have an agreement that my Exhibits A through N as in Nancy will also be admitted. And if that agreement holds, then I have no objection to his exhibits.

MR. MORRIS: And it does, Your Honor.

THE COURT: Okay. And --

MR. RUKAVINA: Then I would -- I would move for admission at this time as well, Your Honor.

THE COURT: All right. And let's make sure I know

where A through N appear. It looks like they are -- are they all at 18, Docket Entry 18?

MR. VASEK: Correct, Your Honor.

THE COURT: All right. So I will admit 1 through 21 of the Debtor, which appear at Docket Entry No. 10 and 19, and Exhibits A through N of the Advisors, which appear at Docket Entry No. 18. All right.

(Debtor's Exhibits 1 through 21 are received into evidence. Advisors' Exhibits A through N are received into evidence.)

MR. MORRIS: Okay. And with that, the Debtor calls James Seery as its first witness.

THE COURT: All right. Mr. Seery, I think I saw you earlier on the video. If you could --

MR. SEERY: Good morning, Your Honor.

THE COURT: Good morning. All right. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

JAMES P. SEERY, JR., DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Can you hear me okay, Mr. Seery?

A I can. Yes, sir.

Q Okay. Let's just cut right to the chase. Was the Debtor party to certain shared services agreements with Highland Capital Management Fund Advisors and NexPoint Fund Advisors?
A Yes.
Q And I'm going to refer to those two entities as the Advisors; is that okay?
A That's fine. Thank you.
Q And pursuant to the shared services agreements, did the Debtor historically provide back- and middle-office services to the Advisors?
A Yes.
Q Okay. And is it your understanding that the Advisors provide advisory services to certain investment funds?
A That's my understanding, yes.
Q Okay. Do you have any understanding as to whether or not the Advisors provide those services to the funds pursuant to written agreements?
A I believe they have agreements with each of the funds.
Q Okay. And do you understand that some of those investment funds are publicly traded?
A I believe most of those are, the -- those '40 Act funds are retail funds, yes.
Q And what does it mean, you know, in your -- in your world, what does it mean to be a retail fund?
A There are institutional-type investments which are only

available to institutional investors or credit investors, depending on the type of investment it is, and there's particular rules around what types of investors can engage in certain types of investing activity, designed to, really, have more sophisticated investors engage, if they desire, in more risky endeavors and less who's believed to be sophisticated investors engage in more what are referred to as retail activities.

That's not saying that the retail activities aren't sophisticated and risky. They can be. But there's a division in how certain types of investors are able to access certain types of investments, and retail funds typically are open to any investor that wants to invest, and they can buy those on a -- or sell them on a regular basis.

Q Are you aware of any agreement of any kind between the Debtor and any of the funds that are advised by the Advisors?

A No, there are no -- no such agreements.

Q Okay. Let's turn our attention to August 2020. Did there come a time in August when the Debtor filed its initial plan of reorganization?

A Yes.

Q And can you just describe generally for the Court what the structure of that plan was?

A As we've discussed before, that was the monetization plan. It was at this point that the Debtor determined that it had to

file a monetization plan to effectively distribute the assets to the stakeholders, depending on how their claims were ultimately resolved. And the monetization plan was the plan we came up with.

Q Okay. And do you recall that that initial plan provided for the treatment of certain executory contracts?

A Yes.

MR. MORRIS: Can we just put up on the screen Exhibit 12, please? And if we could focus in on that first paragraph.

BY MR. MORRIS:

Q Is it your understanding that the initial plan filed by the Debtors provided that unless an executory contract was subject to one of those provisions in the first paragraph, that it would be deemed rejected?

A Yes. It was a pretty integral part of the plan, that we were going to downsize the operations of the business considerably, and many of the operating businesses, the servicing of shared service counterparties, were going to be eliminated, and we would either terminate those agreements pursuant to their terms or they would be deemed rejected.

Q Okay. And what were the consequences for the shared services agreements for a provision such as this?

A Well, the counterparties would no longer have those services and have to seek them, to the extent they needed them, elsewhere.

Q Okay. Was this the only plan that the Debtor was pursuing at this time?

A It was the only plan that we filed. We were considering other options, which at that point was the so-called grand bargain, which we were attempting to negotiate alongside the monetization plan.

Q Did the Debtor engage in any discussions with the Advisors after filing this plan about a possible transition of services?

A Yes.

Q Can you describe for the Court your recollection about those discussions in the fall of 2020?

A Well, initially, it started in the summer. And knowing that this was a significant possibility, I gathered the Highland operating team, many of whom are responsible for servicing the counterparties under the shared service arrangements, and they knew that they were not going to be part of the continuing Debtor if the monetization plan was confirmed. And I described that there's a corporate carve-out, that there would be significant work that had to be done, that that team would have to accomplish, you'd have to allocate responsibilities and know exactly how you're going to perform these services, indeed, if the counterparties wanted those services performed post-confirmation.

And we started with a Zoom meeting in August and tried to

replicate a similar meeting each week so that we stayed on a timetable.

By the early fall, or mid-fall, I'm sorry, I guess it was November 24th, I had a conversation directly with Mr. Dondero by phone. And on that phone call, I described very much to him the same situation.

It was Mr. Dondero, Mr. Ellington, Mr. Lynn, Mr. Pomerantz, Mr. Demo, and Mr. James Romey from DSI on the call. And on that call, I know we went through several issues, and some of them were becoming particularly heated, especially the settlement with Acis, because that was problematic for Mr. Dondero.

We advised Mr. Dondero that he would have to resign from the board if he was going to take antagonistic -- not the board, the portfolio manager position -- if he was going to take antagonistic positions versus the Debtor.

Mr. Lynn indicated that he was going to depose me with respect to the 9019 settlements and was -- wanted to be able to object to those, as well as the Acis settlement as well as the Redeemer settlement.

We also talked about the potential of the grand bargain plan, and we talked very specifically about the filed plan, the monetization plan, and the transition that would have to be accomplished. And I walked through, again, my comparison to a corporate carve-out and the difficulty of achieving those

kind of transactions even if all parties were working hard to get them done and wanted to get them done.

And I recall very specifically Mr. Dondero telling me that I should be prepared, if his grand bargain plan wasn't accepted, that my transition plan wouldn't be very easy and he would make it difficult. And I recall very specifically saying that I was a Boy Scout for a long time and that the Debtor would, in fact, be prepared. While we thought it was going to be in his economic best interest to come to agreement, that we would not be left unprepared and the Debtor would move forward even if he didn't agree.

Q During the negotiations that you're talking about, was the form of -- just to focus on the transition part, was a form or structure of a successor to the Debtor, at least in terms of a provider of the back- and middle-office services, discussed?

A Yes.

Q And what was the -- what was the substance of those discussions concerning the form of the successor?

A The initial substance was that it would be some subsidiary of NPA or a Dondero related-party entity. I picked NPA just as a -- because it was a registered investment advisor, it would be an easy transition over, and that's where the employees could go, that's where the services could be provided from, it would be rather seamless, and they were sharing certain services already -- for example, HR services

like medical insurance, health insurance, et cetera. And so I thought that that would be the easiest entity. It would obviously require Mr. Dondero's agreement.

Subsequently, the idea of a Newco became an idea that was developed originally by Mr. Ellington. At least, his representation to me was that the -- he and other employees didn't want to work directly for Mr. Dondero because he's already retraded them on the compensation. Deferred compensation.

Q As time moved on, by November, was the Debtor gaining any momentum with respect to its asset monetization plan?

A Well, the asset monetization plan began to gain considerable traction as the possibility of either a grand bargain or a pot plan fell away. There were significant negotiations that we had already discussed in respect -- or, at the confirmation hearing in respect of the terms of that plan, and it began to gain significant momentum towards the voting and the confirmation deadlines.

Q And did the Debtor make a decision in November to specifically disclose that it intended to reject all of the shared services agreements?

A Well, prior to that time, I had been in front of the retail boards by phone a couple times and explained basically the overview of the bankruptcy, what was happening. Initially, the attempts at a grand bargain, then the filing of

the monetization plan, and the -- and the possibility of a grand bargain and the competition between the two and the likely scenarios for each.

In addition, we talked about, if there wasn't a grand bargain, what the transition would look like and my expectation, as I described earlier, that it was in everyone's economic best interest -- meaning NPA's, HCMFA's, as well as the funds -- to transition these services from the Debtor, because we weren't going to continue them, to a Dondero-related entity to perform those services for the funds.

There were -- there came a time when the disputes with Mr. Dondero became significant enough where the Advisors and the funds were actually objecting to certain things that I and the Debtor were doing in the case, and I told one of the retail board members that I would no longer participate in any of their calls. And he understood why, and I was very specific that it had to do with their antagonistic actions versus the estate.

So, as we moved forward towards November, the monetization plan became clear, it became more and more clear that the monetization plan was the only plan on the table. And by mid- to late November, we had settled on terminating the shared service agreements and send out termination notices at the end of November.

Q Before you send out the termination notices, do you recall

the Debtor filed their Third Amended Plan --

A Yes.

Q -- in particular?

MR. MORRIS: And can we just put up on the screen, please, Exhibit 13?

BY MR. MORRIS:

Q Do you recall if that's the plan that provided the notice that the shared services agreements would be terminated?

A That -- that -- well, the plan continued the position that if agreements weren't specifically assumed they would be deemed rejected.

It also made clear that we weren't going to continue to provide any services for the Advisors and their managed funds.

And then we actually sent specific termination notices under the agreements. So those agreements were terminated pursuant to their terms. They didn't need to wait for the confirmation of a plan to be deemed rejected.

Q Okay.

MR. MORRIS: Can we scroll down just a little bit? Okay. Keep going. Yeah, right there.

BY MR. MORRIS:

Q Do you see the provision beginning on the bottom of Page 24? Again, this is Exhibit 13. Continuing to the top of the next page. That's the provision that put the world on notice that the Debtor was not going to assume or assume and assign

the shared services agreements, right?

A Well, this is another one of the provisions. The original plan made clear that that's what we were going to do, the original filing that we did in August.

Q Okay.

A We were very clear that we would not be assuming these agreements.

This filing made clear that we were, again, but with even more specificity, not going to continue to provide these services, and then subsequently we filed or delivered the termination notices.

Q Okay. And I see the last sentence of the paragraph ending at the top of Page 25 states that the contracts "will not be cost-effective." Do you see that?

A Yes.

Q What is that a reference to?

A Well, I think we've had discussions before, around confirmation and prior to that, those hearings, that the Debtor was run at a loss. And the more work we do, the more losses we find.

Basically, the Debtor ran at an operating loss, and then had to sell assets to pay deferred compensation or other expenses. The Debtor has been run that -- it appears the Debtor has been run that way for a long time, and many of the services that the Debtor provides to the shared services, the

cost of those services exceed the amount that we receive under those contracts.

In addition, there's other entities that services -- and persons for whom significant services are provided and nobody pays anything. They're not even contracts.

So, these contracts, the Debtor as an operating entity was run at a loss. These contracts were negative. And that doesn't even deal with the fact that many times these entities didn't pay what they did, in fact, owe under the contract. So there are significant receivables that are owed by these entities that haven't been paid.

In addition, the Debtor advances funds on a regular basis for effectively the operating expenses of the Advisors and is often not repaid timely.

Q Okay. A couple of weeks -- I think you referred to termination notices. Did the Debtor send termination notices to the Advisors shortly after filing this Third Amended Plan?

A Yes. They were sent at the end of November.

Q Okay. Let's just look at the termination provisions, and then we'll quickly at the termination notices.

MR. MORRIS: Can we put on the screen Trial Exhibit 2, which was part of the deck of my opening?

BY MR. MORRIS:

Q Are you generally familiar, Mr. Seery, with the shared services agreements with the Advisors?

A I am.
Q And are you aware that the shared services agreements contain termination clauses?
A Yes.
Q All right. So this is -- what I've put on the screen is the Debtor's Exhibit No. 2, and it's the shared services agreement with Highland Capital Management Fund Advisors. Do you see that?
A I do.
MR. MORRIS: Can we just focus in on Section 7, please?
BY MR. MORRIS:
Q Okay. And is it your understanding that's the termination clause?
A Yes. There's the term. It's in 7.01. And the termination provision is in 7.02.
Q Okay. And can you just describe for the Court your understanding of how Article 7 works?
A Article 7 works that the agreement will automatically renew on an annual basis unless one or the other parties terminates the agreement. And so each party is entitled to terminate the agreement on 60 days' advance written notice.
Q All right.
MR. MORRIS: If we can take that down and put up Debtor's Exhibit No. 4, please.

BY MR. MORRIS:

Q And do you see this is the shared services agreement between the Debtor and NexPoint Advisors, LP?

A Yes.

Q And are you generally familiar with this document?

A I am.

MR. MORRIS: Can we go to Article 7, please? Thank you.

BY MR. MORRIS:

Q Can you tell the Court your understanding of what Article 7 provides?

A It's a little bit different than the last one. This is a later agreement. The other one was a document that was clearly cribbed from another agreement that wasn't exactly a shared service arrangement. But this one doesn't have the automatic renewal. It just puts the agreement into operation, and then either party may terminate it at any time on 30 days' written notice.

Q And did the Debtor rely on the two Article 7 provisions that we just looked at to give notice of termination of the shared services agreements?

A I'm sorry. Somebody clicked in. Did you say did the Debtor rely on?

Q Yes.

A Yeah, those are the governing provisions that we relied

on, yes.

Q Okay.

MR. MORRIS: So can we put up on the screen Exhibit 3, please?

BY MR. MORRIS:

Q And is this the Debtor's written notice to Highland Capital Management Fund Advisors of its termination of the shared services agreement effective as of January 31, 2021?

A Yes. That's our notice of termination.

Q Did the Debtor ever rescind this notice?

A No.

Q Okay. Did the Debtor ever tell the Advisors, to the best of your knowledge, that the Debtor was considering rescinding this notice?

A No.

MR. MORRIS: Thank you. Can you take that down and put up Trial Exhibit No. 5, please?

BY MR. MORRIS:

Q And is this the Debtor's written notice to NexPoint Advisors dated November 30, 2020 that it was terminating the shared services agreement as of January 31, 2021?

A Yes. That's the Debtor's termination notice to NPA.

Q Did the Debtor ever rescind this notice?

A No.

Q To the best of your knowledge, did the Debtor ever tell

anybody at the Advisors that it was considering rescinding this notice?

A No.

Q Okay. The Debtor --

MR. MORRIS: We can take that down now. Thank you.

BY MR. MORRIS:

Q The Debtor amended their plan of reorganization after November; is that right?

A Yes. There were a couple of different amendments.

Q To the best of your knowledge, did any amendment ever have any impact at all on the Debtor's statement that it would not be assuming or assuming and assigning the shared services agreements?

A No. It goes beyond the best of my knowledge: It didn't happen, because it was an integral part of the plan.

Q Okay. And can you describe the Debtor's overall view of the plan and the impact that it had or was expected to have on the shared services agreements?

A The basic nature of the plan, as I discussed earlier, going back to August, but as refined, is that the Debtor will no longer be in the business of providing shared services to these Advisors.

Q Okay. So the notices are sent on November 30th. They're 60-day notices. What do you recall happening in December with respect to negotiations over the transition of services, if

anything?

A The short answer is not much. So, we did, as I said, start the transition analysis and discussions and put together detailed spreadsheets with the various agreements that might be necessary for each side. And some agreements would be required for the Debtor to go forward, some contracts. Other contracts were not necessary for the Debtor but were deemed to be necessary for the Advisors. And we were working through that analysis continually through the fall and through December. But there weren't -- at that point, there wasn't very much going on with direct negotiations as to how this was going to happen. And my analogy for the Debtor was like pushing on a string.

Frank Waterhouse in particular had been told by Jim Dondero that he did not have authority to negotiate for him. So once we had laid out what the contracts were, and we had an original structure that the rent would be divided 75/25 and paid by the Advisors, and then the costs of the contracts would be divided 60/40, with the majority paid by the Advisors, we really didn't get much traction other than trying to put together that term -- that schedule so we knew what those costs were, and then also to figure out what was unpaid by the counterparties.

In addition, at that time, because it was pretty clear that the monetization plan was going to go forward and go into

the confirmation, right around that time, and it may have been the beginning of January, the Advisors stopped paying on certain of the notes, and then we accelerated those notes.

Q And do you have an understanding as to who was the -- who was the negotiating leader on behalf of the Advisors in the December-January time period, if anybody?

A Well, for the Advisors, it was a combination of the Highland team that would transition over and their counsel. And the -- meaning the counsel for the Advisors.

Q So now, moving into -- withdrawn. Were the Debtor's professionals engaged in this process, not just you?

A Oh. Oh, yes. Very deeply. We spent literally hundreds of hours with both DSI and your firm, the Pachulski firm, negotiating provisions, the structure, how this would work, what the transition would look like.

As I said earlier, corporate carve-out is very complicated, and there are -- there are often transition services that have to be carried through for a period of time where both sides will use certain services. And then there are shared services which will be carried through for a longer period of time.

We came up with a structure that we think worked really well in light of the term of the lease or the tenor of the lease, so that we knew how that would work between the parties, as well as certain IT contracts specifically that

were required for both parties to function and when their renewals would come up and then how those businesses -- how those functions would transition or be subject to renewal of additional contracts.

Q As the calendar turns into January and January 31st is approaching, do you recall the tenor of discussions or what's happening in the last two weeks of January, if anything, with respect to --

A Well, --

Q -- the negotiations?

A Yeah. I mean, we started really pushing it, particularly after confirmation, to try to get this done, because either the funds and the Advisors had alternative arrangements or they didn't. And if they didn't, we thought that would be very difficult for, obviously, for them and their funds, but also for the Debtor, because we had kept their records previously, we had done the work previously, we had sent in terminations, and these are SEC-regulated funds. So we became very concerned that there was not going to be a responsible transition. And in fact, we had gotten very little feedback -- no feedback, frankly, from the boards -- but very little feedback from anybody as to whether they were going to accept the terms that we had put forth or whether they were going to find an alternative arrangement.

Q As the calendar got closer to January 31st, was there a

request by the Advisors for an extension of the termination deadline?

A It became clear that they did not and had not done virtually anything. I sent, I think, three or four letters and emails directly to board members imploring them to pay attention, to take action, and if they had an alternative plan, to tell us. By the end of January, it was clear that they didn't have any alternative plan and needed more time.

MR. RUKAVINA: Your Honor, I'll move to strike that. Clear that they had no alternative plan. There's no foundation for him to make that statement.

THE COURT: I overrule.

BY MR. MORRIS:

Q You mentioned the SEC. Was the Debtor concerned about the SEC's position if the Debtor had simply terminated services under the contracts as of January 31st?

A Very much so. So, my own personal experience, as well as the experience of our fund counsel, is that while the SEC keeps a close eye on a number of issues related to investing and fund management, retail funds get particular focus because of the individuals who can invest in those and at least the perception that they may not be as able to defend their rights as others. So the SEC does keep a particularly close watch on those kinds of funds.

We were concerned that, even though we had done everything

we believe correctly to terminate the agreements pursuant to their terms, and in fact had negotiated for months in good faith and spent millions of dollars trying to get a transition, that if the funds were to simply stop providing information to their investors or were to stop being able to service their investors, that a SEC investigation would ensue and that it would cost the Debtor time and considerable money to deal with those issues.

Notwithstanding that, we felt it was important to notify the SEC, and so we reached out through our counsel and advised them of what we believed was going on and our view, based upon the actual discussions and the request from the Advisors for an extension, that nothing had been done up into the first weeks of February.

Q Thank you. And ultimately, the Debtor and the Advisors agreed to a two-week extension of time; do I have that right?

A We agreed to a two-week extension in the first extension.

Q Uh-huh.

A And during that time, we tried to get, in particular, the employees that would be transitioning and become the Newco to really focus on trying to get an agreement nailed down. And so we had our -- our advisors take the agreement that was largely structured in terms of knowing what the contracts were and the costs that -- and work on trying to nail down the final terms with respect to how the shared services would work

over a period of time, including working with third-party vendors.

Q I just want to follow up on a couple of things that were in your prior answer to make sure that the record is clear. Does the Debtor have special fund counsel?

A Yes.

Q And who is the Debtor's fund counsel?

A WilmerHale.

Q And is it your understanding that they have the expertise with respect to the securities and the management of funds of the type that are at issue in this case?

A Yes. They're one of the top firms in the country in this area.

Q Okay. And did -- well, I'll just leave it at that. Do you recall during this time if the Debtor informed the Advisors that it would participate in negotiations only if outside counsel were present?

A Not negotiations. I think we would always have been willing to engage ourselves in negotiations. What we were concerned with were the employees who were forming Newco being put in what we thought were untenable positions with respect to negotiations involving certain members of the Advisors' team and the board -- of the funds' boards of directors. And that came from very specific concerns that employees raised with us about threatening conduct and statements from some of

those folks.

There were a few employees that had shared service responsibilities that were actually deemed employees or deemed officers at some of the Advisors. And so there was what I will call a blame game going on, and the -- as soon as we came to the end of January and there wasn't an ability to get a deal done, certain members of the Advisor team or the fund boards took very strident positions vis-à-vis those Debtor employees. And we were very concerned that, if there wasn't someone there, counsel and taking notes, that those employees would be at a disadvantage.

We also recommended that those employees resign those positions because the negotiation and the positions of the parties had separated such that we thought that having the shared responsibility was untenable.

We made clear that we would have one of our counsel sit on the phone and they would be there to listen and take notes and nothing else. And so that was something that I put in place after advice of counsel that we were leaving our employees in a very untenable space.

Q And with respect to the notion of resigning, do you recall if you gave the employees the option of resigning from one entity or the other, or was it just from the Advisors?

A From the Advisors. But they obviously could have always resigned from the Debtor. We don't have any, with those

employees, any contracts, and certainly it was -- I think I've always made clear that if someone has a better opportunity, they should go take it.

Q And is it fair to say that during this two-week period, notwithstanding some of the things that you described, the parties did, in fact, make progress towards getting to a final transition services agreement?

A Yeah. I think -- I think we made -- we made good progress. And even on the resignation issue, my understanding -- and I didn't have these discussions directly -- was that the Advisors agreed and I think the funds agreed that those employees could resign, and if they ended up at Newco and Newco was providing services, they could reassume those positions post-termination from the Debtor.

So I think there was considerable progress around those items.

The operational items, there was considerable progress around.

There was already, I think, really good understanding and agreement on the cost split.

And then there was considerable discussion around the shared -- some of the shared items going forward, and then how the transition mechanics would work in the event that one party wanted to continue a contract and the other didn't.

So there was -- there was -- by the end of the two-week

period, we'd started to make enough progress that we -- we thought we'd actually get there. It really shouldn't have taken as long as it did. It was -- it was, you know, one step forward, one and a half steps back, quite often. But I think we had a -- largely had an idea that we were very close towards the end of that two-week period.

Q And was that the reason why the Debtor agreed to a short further extension of the termination deadline to February 19th?

A Yes. The original concept that I had come up with with one of the employees who was negotiating for the Newco was that there was no reason that we would have any -- we shouldn't be able to get it done in two weeks, particularly since the economics had largely been agreed to and deemed fair by the financial staff as well as the operators in the business. That we would use the next week to cross T's and dot I's and get in a position to transition the employee team.

We also at that time extended the time for the employees by a week, to make sure that, just in case we didn't get a deal done, we had the staff to be able to clean up, if you will, if negotiations completely fell apart.

But we did, we did agree to an extension at that point. The counterparties paid for that extension. They paid the costs, not fully loaded, but costs of the employees, to help defray the costs that we were carrying for them. And that we

hoped we'd have it completed by that final week.

Q Did you have concerns, as the CEO, that the employees have sufficient time to transition and wind down other aspects of the Debtor's business that were being adversely impacted by this process?

A Oh, absolutely. And if the deal was done, then we would have a shared service arrangement. And just to be clear, the way that typically works is that -- we'll use the actual parties -- the Debtor would still stay in its space, use its systems, have its contracts. The Newco or NPA entity would stay in its space and use its contracts, most of which are in the Debtor's name, but under the same arrangement that we had previously, and we would be sharing a lot of services, so that the transition issues that the Debtor has we would be able to accomplish because the team would still be with us but they would be part of the Newco or NPA as a shared resource.

In the event that we weren't able to reach agreement, I needed to make accommodation with those employees to continue to provide those services in order for the Debtor to complete its transition.

Q All right. So let's take -- let's take this back a week, to last Tuesday. As of that time, did the Debtor believe that it had reached an agreement on all material terms with the Advisors? With one exception?

A Cautiously, yes. I think at that point we felt that we

were -- we were close, but there was a material open issue that we had in terms of trying to get the final agreement done.

And frankly, we were very concerned -- and this is borne by history, not just of my own but the other folks on our team who've been around a lot longer -- that there was a considerable risk that the deal that was agreed to wouldn't actually be signed and it would be retraded as we went forward.

Q As of Tuesday, did the Debtor inform the lawyers for the Advisors that it was prepared to sign a fully-negotiated term sheet, or, in the absence of that, it would seek judicial relief?

A Well, I gave instruction to counsel -- and this was -- you know, we had reviewed this with both your firm and with Wilmer, the WilmerHale firm -- as to how we should go about making sure that the estate was protected in the event that there was either a retrade or we simply couldn't come to a final agreement. And we had -- I advised your firm to tell counsel on the other side that the agreement was done, that we were prepared to sign it, but if they were unwilling to sign it we were going to seek Court intervention to make sure that we had approval of what we had done to date, declaratory judgments setting forth or approving what we had done with respect to the negotiations.

Q Was there -- was -- was there one issue that was -- one meaningful issue that dividing the parties at that point in time?

A Well, the new -- the new issue that was surfaced, and it was a new issue, was this idea that, notwithstanding the preliminary injunction and notwithstanding how the business has been run for the last couple months, that Mr. Dondero would be able to come back into the office. It didn't seem, frankly, like a real business issue, but it became a significant sticking issue. Because for the Debtor, it's a very significant issue.

Q Why didn't the Debtor just agree to allow Mr. Dondero back into the offices?

A Well, as the Court has heard before in prior hearings, Mr. Dondero's conduct through the fall, once the monetization plan had been put in place, has been extremely difficult, to say the least. Threatening email or texts to me. Obstreperous litigation, I would say vexatious litigation, with respect to every aspect of the transition. Numerous retrading of provisions in this negotiation. And statements and effectively, I think, threats to other employees, including while he was on the stand, you know, in the court. And I found, from my seat, that that would be really difficult to bring employees back into the Debtor to help implement the plan while Mr. Dondero was in that space. There was really no

need for him to have to be in that space from an operational perspective, as the funds and the Advisors had proved for the prior two months.

Q Is it your understanding that, but for the issue of Mr. Dondero's access, the Advisors and the Debtor had otherwise agreed to all material terms of a transition services agreement as of last Tuesday evening?

A Yes.

Q Did the Advisors sign the term sheet that the Debtor had tendered that reflected what you just described?

A I don't recall if the Advisors did. I certainly did. But there were -- there were additional changes. So we -- we had reached that agreement earlier in the week. We didn't get agreement on the final point of Mr. Dondero's access. We filed our pleadings in the Court, and I believe that was Tuesday or Wednesday, and then moved forward towards this hearing.

And during that time, the negotiations continued. So there were a number of different changes, but we -- we were very clear that we had an arrangement, we had a deal that was fully negotiated, we had a deal that we thought was extremely beneficial to the Advisors, that it worked well for the Debtor, that it worked well for the Debtor's employees, who would then be Newco employees, or NPA employees, depending on how they ended up splitting it, and that the flexibility of

that agreement served all the parties' interests and we didn't intend to change it.

Q Did -- do you know whether the Debtor provided to the Advisors' counsel a copy of the complaint and the motion that it was intending to file prior to the time that it actually filed the documents?

A Yes, we did.

Q Okay. So the Debtor gave -- is it fair to say the Debtor gave the Advisors specific notice, and, indeed, copies of the documents before the action was commenced?

A Well, I think we -- part of the strategy we'd come up with with WilmerHale was that we should do everything we can to be accommodative, within the reason -- within what we thought was reasonable for the Debtor being able to implement its plan. And I believe we did that. And out of caution and frustration, both with respect to the inability to get TS, if you will, as well as the concern that you could have a retrade, based on past experience, we told him if we didn't have an agreement that was signed and that was binding, that we would move forward with the court hearing.

The reason this is structured, by the way, as a binding term sheet, it was a scramble in January to try to put it together. Otherwise, we would have had a binding agreement. It actually reads more like an agreement than a term sheet, and has a significant Schedule A on the back. But the amount

of time that's been spent on this, it's probably not fair to call it a term sheet. It's an agreement.

Q After the Debtor commenced the action, do you recall that last Friday the Advisors made a written proposal through their counsel with two options, an Option A and an Option B?

A Yes, I do.

Q Did the Debtor perceive at that time that the Advisors' attorneys were authorized to make that offer?

A Well, they represented that they were. We were at a -- we were at a crossroads. We had spent so much time on this agreement and trying to get to a final shared service arrangement that the last day for employees, which was scheduled to be the last day of the month, was coming on us very quickly. And if we weren't going to get this shared arrangement done, we had to make significant decisions with respect to how to transition, with whom to transition, and how to move forward to implement the plan. So we couldn't, frankly, waste any more time on this agreement. And I say "waste" with thought, because we thought it was productive, but the amount of time, literally months, is astounding for something that is not that complicated.

We got to Friday, and the new arrangement or proposal from the Debtor was -- was basically you can -- I mean, from the funds, Advisors, was you can take A or B. A was, in essence, the same arrangement we had prior in the week, but Mr. Dondero

could come in the office. We'd already told them that was untenable, it didn't work.

B was you could -- we could do the same arrangement except the Advisors would not be responsible for any of the rent. Recall that I mentioned that this was a 75/25 split on the rent. Roughly, that's about a million dollars to the estate.

We spent time Friday morning with the IT folks and with the operations folks on can this be done? Can we actually provide -- can you provide the services? Can these funds be run if they're not in the office? And the answer was so long as the operations people can have access to the office and so long as the IT people can have access to the office, we could largely run it. So this was just really a retrade on economics.

We determined that, fine, we'll take Option B, even though it cost the estate. We didn't have the luxury of being able to continue to waste time and negotiate this with the impending dates coming up. So we agreed to Option B on Friday. I, in fact, sent my term sheet to counsel to deliver, and it was scheduled, I think, as you mentioned earlier in your opening, for the afternoon of Friday for a call to go through wire transfers, which included an initial payment plus a deferred payment, a monthly payment, plus the cost payments that would be made under the agreement, and certain offsets that we had previously agreed to.

Q And are you aware, did the Debtor, through counsel, inform the Advisors, through counsel, that the Debtor had accepted Option B?

A Yes. My counsel told me that they had sent over notice to them, that the call to walk through the final points and to assure that wires were being sent and to engage in the exchange of signatures was set up and everything was agreed to.

Q And what happened later in the day?

A I would say shockingly, but it wasn't, we were told that the call was off. Mr. Hogewood advised that, through email, that there would no longer be a necessity of a call and he would be reaching out directly to Debtor's counsel.

Q And did you learn after -- after -- in the afternoon that the Advisors had withdrawn Option B, the one that the Debtor had accepted?

A Initially, it was withdraw Option B, and then it was accompanied I think with a basic statement that we don't really need you anymore, which was surprising, only because it --

(Interruption.)

A -- a transition like this, you would -- you would run systems side by side, make sure that your IT folks were heavily involved. You would assure that your -- your human resources and operations folks were involved. And none of

that had been done because it was assumed that the transition would happen.

Q Is it your understanding that the Advisors were still at that time willing to do Option A, the one that would allow Mr. Dondero back in the office?

A I believe they were, yes.

Q Do you know if the Advisors made any further offers in respect of a transition of services over the weekend?

A Well, that was one of the things that was odd and belied their statement that they could operate without any assistance from the Debtor, is that they left Option A on the table. If they had alternate arrangements, why was Option A still on the table? So that was puzzling, but counsel made the representation to us and we took it. And then other counsel over the weekend just started lobbing in proposals.

Q Did those proposals contemplate in any way the continued provision of services by the Debtor to the Advisors?

A That's -- that's what they were, yes.

Q Okay. All right. Why did the Debtor commence this lawsuit?

A Well, I -- as I explained earlier, we believe that we've done everything we were supposed to do or required to do under the contracts, the shared service arrangements, in terms of both operating under those agreements and terminating them according to their terms. We believe we've done everything

that we'd be required to do under the Bankruptcy Code with respect to filing a plan, making clear what the provisions are with respect to executory contracts, and making that plan -- making it even more clear what the provisions dealt with, how the provisions of the plan would impact executory contracts and how those contracts would be deemed rejected if they weren't explicitly accepted and assumed. And we made clear, we wanted to make clear that we'd properly terminated the agreements in accordance with their terms.

So we filed this action because of the, frankly, the back-and-forth negotiations as well as the accusations and threats from earlier in the negotiations that I previously described, where we're seeking now a declaration that the shared services were properly terminated in accordance with their terms, that the shared services were not assumed pursuant to the contract, and although they'd been terminated, even if they had not been terminated, they would -- they would be deemed rejected. That the Debtor is permitted, because of the terms of both the plan and the contracts, which have been terminated, to cease all access and support and has no further responsibility for providing any services to the shared service counterparties under those terminated agreements, and that the shared service parties, the Advisors, come forth and tell the Court, tell the world, tell the investors, and tell the SEC that they have an alternative arrangement.

And, again, our concern is while, yes, we are good corporate citizens and we want to make sure that we don't leave, if you will, a mess because of the actions that are happening in the court, we're very concerned that our counterparties may not be as concerned about the mess they leave.

And we -- one of the reasons we reached out to the SEC was to make sure that they were on notice of this proceeding and the potential impact on retail investors, and we think that it's something that the Court should require these Advisors, who have been in antagonistically fighting the case, knowing the specific provisions of the case, and not making arrangements until the last 24-48 hours, we do -- we do believe that, as corporate citizens and as responsible fiduciaries in a bankruptcy, we have some responsibility to make sure these terminations are handled correctly. While we may not be able to force them to do so, we should have them tell us how they're doing it.

Q Does -- did the Debtor have any concerns that the failure of the Advisors to adopt and implement a transition plan, that that might have negative impacts on the Debtor's ability to implement its plan of reorganization?

A Well, as I said earlier, the SEC, in our experience and our counsel's experience, takes a particular focus on retail funds. And where those funds have blown up for various

reasons, whether they are unable to make a redemption or they're caught in some kind of security that doesn't match the investment parameters of the fund or whatever those are, the SEC takes a particular focus, and investigations can take significant time and have significant cost for all parties who are anywhere near the retail funds. And, clearly, as the provider of shared services to the Advisors, while we didn't have any agreement with the funds, if the SEC came in to investigate or if they do come in to investigate what's gone on here, there will be a significant cost, and it will, if not derail, it will certainly slow down our implementation of our plan.

Q What exactly does the Debtor want the Court to -- what relief is the Debtor seeking now that the Debtor has learned of the four-legged plan that was described yesterday in the deposition?

A The declaratory relief that I just stated would be essential for the Debtor. One, that the contracts were properly terminated, in accordance with their terms. Two, that they were not assumed pursuant to the plan. And three, that the Debtor is permitted to cease all services and all access to the shared service counterparties.

To the extent that they need assistance, we'll help them out, we'll give them information. If they have third-party professionals that they want to send over, we'll help them

with data retrieval. But we do have a plan to implement, and we don't have necessarily the full staff to provide services that they were otherwise receiving from us. So we would like a declaration that we do not owe them any of those prior services from the terminated contracts.

Q Did you hear in the opening Mr. Hogewood mention that the Advisors do want continued access to the Debtor's books and records? Or to their, I guess, to their own books and records?

A They'll be able to get access, but that doesn't mean that it's access 24 hours a day. That doesn't mean they get to continue to use the systems without paying for them. That doesn't mean they get to use employees without paying for them. If they have data requests, we would certainly get to them, but we have to maintain and employ people to do that.

Q And is part of the injunction that the Debtor seeks here is to have the Court direct the Advisors to implement and adopt a transition plan that would include taking -- taking their books and records so that the Debtor isn't in that position for a long-term -- on a long-term basis?

A Well, we certainly don't want to be in that position for a long-term basis. We -- we're certainly not going to be the party that has to maintain their records. If they can lift them off, we will do that.

The challenge has been, according to our IT professionals,

who are quite good, separating the data is difficult.

Now, we know that the Advisors' employees were extracting a lot of data off the system over the last week. And whether it was on thumb drives or direct transfers, we know that a lot of data has been taken, which is fine. We just don't -- we don't know what else they might need and we're not in a position to provide a full level of service to them at -- after today.

Q Is the Debtor asking the Court to force the Advisors to adopt any particular plan?

A Not at all. If they -- if their plan works, that's great. If they went to a third-party service, some other fund -- outside fund advisors or shared service providers that can do the job, that's fine. We would like to just have the least amount of burden on our estate going forward, and a declaration that we have no responsibility to provide any particular services, I think, is essential.

Q And would the mandatory injunction that required the Advisors to adopt and implement a transition services plan, would that -- how does that advance the Debtor's goals?

A Well, it sets forth exactly what the Advisors and the funds think they need. And if it's something other than that, then they're going to have to come talk to us, and we'll figure out whether we can provide it and then how it gets paid for.

MR. MORRIS: Your Honor, I have no further questions of Mr. Seery right now.

THE COURT: All right. Pass the witness. Mr. Rukavina?

MR. MORRIS: Your Honor, may I just ask for a short break?

THE COURT: All right. Does everyone need a break?

MR. RUKAVINA: Your Honor, I won't -- Your Honor, I won't have much for this witness, so I might suggest if Mr. Morris can wait five or ten minutes. But whatever is good for the Court.

MR. MORRIS: Go right ahead, sir.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: Ten minutes. If you take more than ten, we're going to break. Thank you.

MR. RUKAVINA: Yes.

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, very quickly, I just want to make sure that the record here is complete. You were discussing Option A and B that was put on the table on Friday, and you were discussing then how Option B was taken off. Do you recall that?

A Yes.

Q And you did mention to the judge that Option A was that my

clients would take all of the leasehold space, correct?
A I don't think I mentioned that, no.
Q Okay. Well, I just want to make sure the judge understands that Option A, my clients would have paid for a hundred percent of the rent going forward. Correct?
A I don't believe that's how Option A worked, no. I believe that Option A was structured that, in essence, the Debtor would get out and the shared -- the Advisors would keep all of the space as well as all of the systems and all of the records.
Q Correct. But the Advisors would pay a hundred percent -- okay.

MR. RUKAVINA: Let's just pull up Exhibit 19, Mr. Vasek, please.

BY MR. RUKAVINA:
q And I just want the -- I just the record to be clear here, Mr. Seery.

MR. RUKAVINA: Mr. Vasek, are you there? (Pause.) And then scroll down to Page 5 of 7. Okay. Stop there.

BY MR. RUKAVINA:
Q Mr. Seery, can you see this to refresh your memory?
A Yes. I didn't need it to be refreshed. That's what I said.
Q Well, doesn't Option -- doesn't Option A here say NexPoint parties take one hundred percent of the leased premises and

one hundred percent of the rental cost?
A It does, but the key part of it is that the Debtor gets out.
Q I understand that.
A It gives up control of that stuff.
Q I understand that. I was just trying to clarify for the record, because you didn't mention it before, that NexPoint would pay a hundred percent of the rent. And I am correct about that, right?
A That's correct.
Q Okay. And Option B, you mentioned in your direct testimony that in Option B my clients would pay no rent. Do you recall that?
A Yes.
Q But do you also recall that under Option B my clients would vacate the premises?
A I believe -- yes. I think I said that, yes.
Q Okay. I believe you also mentioned that the Dondero access issue was a last-second issue. In fact, that had been a lingering issue for weeks, had it not?
A I don't believe so. I don't think it came in until after January 31st.
Q Are you not aware that with each turn of the draft agreement your lawyers would change it to make it clear that Dondero couldn't have access while the Advisors' lawyers would

change it to make clear that Dondero could have access?
A I'm aware that those went on, but I believe that was after January 31st.
Q Okay. I think I have very few questions, since Mr. Morris really, I think, went over it in quite some detail. Please confirm for the Court that my clients' employees have vacated the premises as of last Friday?
A That's my understanding, but they still are accessing services.
Q Okay. And please confirm for the Court that the Debtor has not and will not provide any transition services after last Friday, February 19th.
A We actually have provided assistance, and certain of the employees of the Debtor are doing things for the -- your clients.
So, for example, trades were conducted yesterday by clients of HCMLP for your clients. Data was accessed by your clients. Equipment was taken from the office and used by your clients. The systems were maintained by the Debtor and accessed by your clients. It's a pretty extensive list.
Q But that's because you have decided to allow that to facilitate the transition, correct?
A That's correct.
Q Yeah. You're not doing that because there's an agreement in place; you're doing it out of good faith but not because

there's any kind of requirement to do that, correct?
A That's correct.
Q Okay. As of February 19th, the Debtor is no longer required to provide any of the shared services, and it will not, unless you on a one-by-one basis agree to permit it, correct?
A I haven't been doing it on a one-by-one basis. We did it on a blanket basis.
Q Okay. And as of the end of today, that's over, right?
A I hope so. We'll have an order that will give us the declarations we desire and we can move forward.
Q Well, let me clarify my question. If the judge does not enter a mandatory injunction, the Debtor has nevertheless told the Advisors that any of the shared services are done as of the end of the day, correct?
A I don't believe that's the case. We'll consult with our counsel, both bankruptcy and regulatory.
Q I think you mentioned this, but you can confirm for the Court that some of the data held by the Debtor is actually the property of the Advisors, correct?
A I don't -- I don't know that it's the property of the Advisors. I think they're entitled to receive it, but we're entitled to keep a copy.
Q Okay. Well, I'm not going to waste the Court's time by reading the transition services agreement, but if that -- I'm

sorry, the shared services agreement -- but if that agreement provides that my clients' data is its property, you wouldn't disagree with that, would you?

A No, I wouldn't --

MR. MORRIS: Objection.

THE WITNESS: If that's what it says, I wouldn't disagree with it.

BY MR. RUKAVINA:

Q Okay. And in fact, the Advisors have already copied a large amount of data and have taken that copy for their own use, correct?

A That's what I've been advised.

Q Okay. And with respect to their own data, not the Debtor's data, you will continue to, with reasonable access, permit them to copy the balance of whatever their own data remains, correct?

A To the extent that we can, yes.

Q Yeah. Yeah. Okay. And just to confirm, other than the employees that you determined will be retained by the Reorganized Debtor, the remaining employees will be terminated effective February 28th?

A Not -- not all, no. There's a -- there are some changes to that.

Q Okay. Well, some employees are going to be terminated on February 28th, correct?

A Yes.
Q Okay. And the Debtor doesn't have a problem with my clients either directly or indirectly retaining those employees, correct?
A No problem at all.
Q Okay. Thank you.
MR. RUKAVINA: Your Honor, I'll pass the witness. Thank you.
THE COURT: Any redirect?
MR. MORRIS: I have no redirect, Your Honor.
THE COURT: All right. Thank you, Mr. Seery.
We'll take a ten-minute break. It's 10:51 Central. We'll come back a minute or two after 11:00.
THE CLERK: All rise.
MR. MORRIS: Thank you, Your Honor.
MR. POMERANTZ: Thank you, Your Honor.
(A recess ensued from 10:51 a.m. until 11:05 a.m.)
THE CLERK: All rise.
THE COURT: All right. Please be seated. All right. We're back on the record in the Highland-Advisors matter. Mr. Morris, you may call your next witness.
MR. MORRIS: Thank you, Your Honor. The Debtor calls (audio gap) Dondero.
THE COURT: I'm sorry. Did you say Mr. Dondero?
MR. MORRIS: Yes.

THE COURT: All right. Mr. Dondero, could you speak up? Please say, "Testing, one, two" so we pick up your video.

MR. DONDERO: Testing, one, two, three.

(Feedback.)

THE COURT: All right. Well, I heard you. I don't see the video yet. There you are. Okay. We're going to hope we've got some good audio. I was hearing a little bit of feedback. Please raise your right hand.

MR. DONDERO: Oops, I'm sorry. I can't hear anybody.

THE COURT: All right. I need you to please raise your right hand to be sworn in. Well, this is a problem. Mr. Dondero, --

MR. DONDERO: Take off the headphones?

MR. WILSON: Judge, we're trying to get his headphones to get the sound through them. Should just be just a second.

(Pause.)

THE COURT: All right. Do I need to be speaking to see if they can hear me clearly?

A VOICE: How's it going?

THE COURT: All right. What's going on?

MR. WILSON: I can hear you, Judge. We're just working through a technical issue with Mr. Dondero's headphones.

THE COURT: All right.

MR. WILSON: Hopefully we can resolve that momentarily. (Pause.) We can try that.

(Pause.)

MR. WILSON: Your Honor, we're going to move Mr. Dondero to another room so that we can get this issue resolved without the need for headphones.

(Pause.)

MR. DONDERO: Testing, one, two, three.

THE COURT: All right. We got you. Well, we've got your sound. Can you hear us okay, Mr. Dondero?

MR. DONDERO: Yes.

THE COURT: All right. Please raise your right hand.

(The witness is sworn.)

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

MR. MORRIS: Thank you, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

JAMES D. DONDERO, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Can you hear me okay, Mr. Dondero?

A Yes.

Q Okay. Just a few questions. You were aware in November that the Debtor had given notice of termination of the shared services agreements with the Advisors, correct?

A Yes.

Q Okay. And you understood that the Debtor was going to terminate all shared services to the Advisors as of January 31, 2021, correct?
A Yes.
Q And were Dustin Norris and D.C. Sauter authorized by you to try to negotiate with the Debtor the terms of a transition services agreement?
A Yes.
Q And had the Debtor adopted a transition plan as of January 31, 2021 pursuant to which it would not need any services from the Debtor?
A I don't know.
Q Okay. You're not aware of the Advisors having a plan in place as of the termination date that would have allowed the Advisors to obtain back-office and middle-office services from somebody other than the Debtor, correct?
A I don't know. They were always working on a Plan A and a Plan B.
Q Okay. Are you -- did you become aware that the Debtor had agreed to extend the termination deadline by a couple of weeks?
A Yes.
Q And is it your understanding that that extension was granted in order to give the Advisors more time to develop a transition services plan?

A I -- I think it was to continue negotiations. I don't -- I don't know if the plan was part of the reason.

Q Okay. Did you learn at some point early last week that the Debtor and the Advisors had reached an agreement on all material terms of a transition services agreement but for your access to the Debtor's offices?

A Yes. I believe over a thousand line items.

Q Okay. And did you learn that the Debtor had tendered a term sheet that reflected the entirety of the parties' agreement but for your access, with a demand that the agreement get signed or the Debtor would commence a lawsuit?

A I became aware of that Wednesday, in the middle of the ice storm, middle of the day.

Q Okay. Let's pull up Exhibit 17 and see if I can refresh your recollection as to the timing and the substance.

MR. MORRIS: And if we could go to the bottom of the email string.

BY MR. MORRIS:

Q This is an email string between lawyers for the debtor and the Advisors. Do you see that there's an email from Mr. Demo there dated Tuesday, February 16th?

A Yes.

Q Okay. And the lawyers on this email from K&L Gates, those were the lawyers who were representing the interests of the Advisors; is that right?

A Yes.
Q And do you understand that Timothy Silva of WilmerHale and my colleague, Mr. Demo, were representing the interests of the Debtor?
A Yes.
Q And do you see in the first paragraph that Mr. Demo informs Mr. Hogewood that the Debtor is prepared to sign the attached term sheet, in the absence of which it would be filing an adversary proceeding?
A Yes.
Q Okay. And does that reflect your recollection that, in fact, it was on Tuesday afternoon that the Debtor made the demand to either sign the term sheet or there would be litigation?
A It doesn't change my testimony. The first time I heard about it was -- about a suit coming at 6:00 was on Wednesday.
Q Okay. Let's go up to the -- Mr. Hogewood's response. Did you learn that -- did you have any communications with anybody on Tuesday about the possibility of the Debtor filing a lawsuit?
A No.
Q Okay. Can you go -- can you go to the email above? Do you see -- let me see if this refreshes your recollection. Do you see that Mr. Demo sent to Mr. Hogewood on Tuesday, just before 5:00 p.m., drafts of the Debtor's adversary proceeding

papers?
A Yeah, I've never -- except for I think you gave me these emails yesterday, but until yesterday I've never seen these emails before.
Q So, so the lawyers who were representing the Advisors' interests weren't keeping you informed last week about the status of negotiations; is that your testimony?
A Generally. Again, I delegated it to Dustin and D.C. to handle the details.
Q Okay.
MR. MORRIS: And scroll up to the -- to Mr. Hogewood's response.
BY MR. MORRIS:
Q Did you learn that Mr. Hogewood had asked for an extension of the deadline from 6:00 p.m. to midnight at any time last week?
A No.
MR. MORRIS: Let's go -- let's go -- let's go to Mr. Silva's email, the next one up.
BY MR. MORRIS:
Q Were you aware that the parties were negotiating and trying to finish up the agreement last Tuesday as the Debtor's deadline for filing a lawsuit was drawing near?
A I knew they were in negotiations on Tuesday and Wednesday, but I didn't know the deadline was growing near until

Wednesday.

Q Did you learn -- did you learn what the open issue or open issues were as of that time?

A I believe there was only one open issue. It was regarding my occupancy.

Q And what is your understanding of what the issue was as of that time last week?

A Since the beginning of the case, the Highland employees have been told to work from home so that the estate didn't have any COVID liability. There hasn't been a Highland employee in the office in a year except for occasional visits. NexPoint employees have worked every day through COVID, full staff every day.

With us taking over either a hundred percent or 75 percent of the lease, and the supervisory leadership strategy that I deserve, and on a regulatory basis have a responsibility to provide for the RIAs, I needed to be in the office on a going-forward basis. And I believe grand efforts were made on the part of Dustin and D.C. to create a wall for a section of the office for the Highland employees -- who have never come in for the last year, probably aren't coming in for the next year -- but if they were to come in, they would have private egress and ingress, and nobody else in the office, including myself, would ever see them come and go.

And I know there were clear negotiating representations

made on their part, but there's never anything that I've been accused of that's been in-person activity. There have been a couple texts, a couple emails, but nothing ever in-person. So the separation for employees who probably were never going to come in the office, and as NexPoint was paying 75 or a hundred percent of the lease, it made inordinate sense -- in fact, it was only tenable -- if I was able to come in and provide leadership and oversight to the (audio gap) Advisors.

Q Did you testify last night that it was Judge Jernigan who ordered the Debtor's employees to stay out of the office because of COVID?

A That's what I remember from early in the case, so that there wouldn't be any COVID liabilities in the estate, but that's why the Highland employees haven't been around for a year.

Q So it's your -- it's your memory that Highland employees haven't been around for a year and that the reason for that is because Judge Jernigan issued an order telling them to stay out of the office because of the COVID risk; is that right?

A That's -- that was my recollection.

Q Okay. You haven't been in the office in the calendar year 2021 except for the day that you went to give your deposition early in January; is that right?

A Yes.

Q And have the Advisors functioned, notwithstanding your

absence from the office?
A Yes.
Q Okay. And in fact, at the end of the day, notwithstanding everything you just said, is it fair to say that the only issue that you're aware of that separated the Debtor and the Advisors as of last Wednesday was your access to the offices?
A I believe that's the case.
MR. MORRIS: And can we just scroll up a little bit to Mr. Hogewood's -- the next email on the next page? Yeah. Right there.
BY MR. MORRIS:
Q In fact, that's -- to put a fine point on it, the Advisors' lawyer says specifically is keeping Jim Dondero away from the office worth losing out on the financial advantages? Is that the position that the Advisors took at that time?
A Again, I've never seen these emails before and I'm not aware of the specific back-and-forth negotiations.
Q Okay. But that's consistent with your understanding, that the only issue that was outstanding as of that moment in time, the only material issue, was your access to the office. Right?
A As of that moment in time, yes.
Q And otherwise, the Advisors, but for your desire to have access, the Advisors would have had a fully-negotiated complete transition services agreement with the Debtor and

there would have been no lawsuit, fair?
A I believe, yeah, I believe that's largely what -- the status at that point.
Q Okay. And so -- and so, because you weren't given access, the Advisors didn't agree to the proposal that was otherwise acceptable, correct?
A Yes.
Q Okay. And did you lose interest in the negotiations after the Debtor made it clear that they wouldn't provide access to you?
A Lose interest? Yeah, but I mean, the two parallel paths for discretion I had given Dustin and D.C. to work on was either complete the negotiated settlement that really would have been, I think, the best transition for everybody and a win-win for everybody, but if not, be prepared for us to go it alone or the Advisors to be able to go it alone and operate without Highland and without being in the space.
Q And did you give that instruction last Thursday after the -- after the Debtor refused to give you access?
A Yeah. They knew that that -- those were -- those were the only two -- the only two -- the only two that I had approved. They were the only two directions I had approved.
Q Are you aware that on Friday -- withdrawn. On Friday, the lawyers at K&L Gates made a proposal to the Debtor that contained two options; is that correct?

A Yes.

MR. MORRIS: Can we please put up on the screen Exhibit #19, please? And if we could go to the bottom.

BY MR. MORRIS:

Q Mr. Hogewood wrote to my colleague, Mr. Demo, just before noon on Friday, February 19th. Do you see that?

A Yes.

Q And this -- Mr. Hogewood presented two options. You were -- were you aware on Friday morning that Mr. Hogewood was going to be presenting two options?

A I was generally aware, which I think is what I testified to in my depo yesterday, that D.C. and Dustin were enthusiastically trying to come up with a settlement. They believed it was close enough to try and get something done, and they were going to work, you know, an A and a B, but consistent with my direction that there was really only two alternatives, but they were still optimistic, because, besides it being a win-win for everybody, it would be less risk and less work for the Advisors if something like the original transaction could get done.

Q Okay. Do you see --

MR. MORRIS: If we could take a look at Option B.

BY MR. MORRIS:

Q Option B, as written by Mr. Hogewood, would have had the Debtor assume the entire lease and have NexPoint vacate at the

end of the month. Do you see that?
A Yes.
Q And that's an offer that was made by Mr. Hogewood on behalf of the Advisors on Friday just around noontime; is that fair?
A I believe so.
Q Okay. Do you know --
MR. MORRIS: Can we scroll up, please?
BY MR. MORRIS:
Q And Mr. Demo responds just a few moments later by saying that he would discuss the options, right?
A Yes.
Q Okay. And then the very next moment, if you scroll to the next one, Mr. Hogewood actually informs Mr. Demo that he had been informed, "There may be an edit needed to Option B, so I need to pull that back momentarily." Do you see that?
A Yes.
Q Do you know what edit was being considered by the Advisors early in the afternoon on Friday?
A No.
Q Okay.
MR. MORRIS: Let's scroll up to the next email, please.
BY MR. MORRIS:
Q And Mr. Demo just responds and he says, "Understood."

Fair?
A (garbled)
Q Let's -- okay. And then the next email from Mr. Hogewood says, "I am authorized to put Option B back on the table as stated below. Both A and B are on the table for your consideration." Do you see that?
A Yes.
Q Do you believe that Mr. Hogewood was acting without authority when he made that statement to the Debtor?
A I don't know.
Q Did you ever ask Mr. Sauter or Mr. Norris whether Mr. Hogewood was acting outside the scope of his authority when he made this offer?
A No.
MR. MORRIS: Can we scroll up to the email -- the next email, please?
BY MR. MORRIS:
Q Do you see that Mr. Silva on behalf of the Debtor was looking for a time to discuss?
A Yes.
Q And then if we go to the next email in this string, they're asking for dial-in. Did you learn early in the afternoon on Friday that the Debtor had accepted Option B as presented by Mr. Hogewood on behalf of the Advisors?
A I -- I don't know when I became aware of that.

Q Did you learn --

MR. MORRIS: Let's go ahead and take this down and go to the next exhibit, please. And start at the bottom.

BY MR. MORRIS:

Q Do you see that Mr. Hogewood is writing to my colleagues again, and in the middle paragraph he says, "As you know, the term sheet preserves everyone's rights on various claims and other litigation, and Davor suggested it would be appropriate to track that language in the body of the agreed settlement order in addition to attaching the term sheet to the order"?

Were you aware early Friday afternoon that the lawyers for the parties were discussing the form of an agreed settlement order that would embody the Option B approach?

A No.

Q Do you see in the next paragraph there's a question as to whether John is preparing the order or an offer for the K&L Gates firm to take that on? Do you see that?

A Yes.

Q Were you aware that the law firm representing the Advisors that you own and control were offering to prepare a settlement offer -- a settlement order that would include the Option B approach that had been accepted by the Debtor?

A Nope. I wasn't involved in any of these details, nor had I seen any of these emails.

Q Okay. Let's go to the next email and see if you know

anything about the facts or the assertions in that email. Do you see Mr. Demo responds, and at the end of his first sentence, there is enough -- there's a reference to having enough room on the wires. Do you see that?

A Yes.

Q Are you aware -- were you aware on Friday afternoon that the lawyers for the Advisors that you own and control and the lawyers for the Debtor were having discussions about how to timely effectuate a wire transfer?

A No.

MR. MORRIS: Can we go up to the 3:33 p.m. email?

BY MR. MORRIS:

Q And just to move this along, did you learn that the parties -- that lawyers for the parties were expecting to go through the final draft of the document?

A No.

Q Were you aware that the lawyers representing the entities that you own and control wanted more time to be able to do that?

A I wasn't involved in this at all.

Q Okay.

MR. MORRIS: Can we scroll up to the email at 3:43 p.m.?

BY MR. MORRIS:

Q And do you see where Mr. Hogewood informs Mr. Demo that he

needs to push the call further because he is "having trouble connecting with someone to be sure they are in a position to review." Do you see that?

A Yes.

Q Was Mr. Hogewood trying to reach you on the afternoon of February 19th in order to make sure you had the opportunity to review the term sheet that was about to be signed?

A I don't know.

Q Do you see, if you scroll up, Mr. Demo asks Mr. Hogewood if he needs a little bit more time?

A Yes.

Q And then, finally, the last email in this deck, do you see at 4:15 Mr. Hogewood says to Mr. Demo, "We should cancel this call and I should just call you and John." Do you see that?

A Yes.

Q And that's because the Advisors pulled Option B that the Debtor had agreed to; is that right?

A Yes.

Q And it's your testimony that you had nothing to do with that decision; is that right?

A No. It -- no. I didn't say that. Once I became fully aware of what A and B were, I had no interest in A or B, and I pointed the team back to the conversations we had had on Wednesday regarding either it's the win-win scenario for everybody and continuity and the office and me being in the

office or it's a -- it's a divorce. And -- but I didn't have an interest in A or B.

Q And yet it is fair to say, though, that the Advisors' outside counsel and the Debtor's counsel spent the whole day on Friday pursuing Options A and B, including preparing settlement orders and for wire transfers, right?

A They'd been working tirelessly Wednesday, Thursday, Friday, Saturday, Sunday, trying to strike a deal, trying to be reasonable, but to no avail. I think now it's -- everybody's comfortable with the divorce and being out of the office.

Q Did -- do you know whether the Advisors made any proposals to the Debtor over the weekend for an *a la carte* menu of services that might be considered?

A Yes. I believe -- yes.

Q Okay. Does the Debtor -- withdrawn. Do the Advisors have a plan pursuant to which it will obtain all of the back-office and middle-office services that it needs that were previously provided by the Debtor in order to fully perform under the advisory agreements with the funds?

A I believe they have a plan.

Q And is that plan sufficient to enable the Advisors to fully perform their services under the advisory agreements with the funds?

A I believe so. The major gating item, which I think

changed over the weekend, was the historic data for the funds was being held hostage, and I think over the weekend, for the first time, it was agreed that the funds could have their historic data that they were entitled to. And I think that improved the quality of their alternative plans.

Q Does the -- do the Advisors need anything from the Debtor today?

A I believe very little, if nothing. They just need data and information and software that they're entitled to that they've paid for, paid for in full over the years.

Q And does the -- do the Advisors have a plan in place to obtain that information that it contends it's entitled to?

A I don't have the specific -- specifics. Dustin is your person there.

Q Do you personally believe that the Debtor had the right to terminate the shared services agreement as of last Friday?

MR. RUKAVINA: Your Honor, I'll object to that question as that calls for a legal conclusion. And I will note for the record that we are not trying today their declaratory action Count One, and we do not consent to that being tried.

THE COURT: Okay. I overrule. He can answer if he has an answer.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Do you believe that there is anything defective about the termination notices that you testified being aware to as of last November 30th?
A I don't know.
Q Do you have any reason to believe that those termination notices are unenforceable?
A I don't know.
Q Do you have any reason to believe that the Debtor has any continuing obligation to the Advisors following last Friday, after last Friday?
A I do believe there's an overall industry standard practice in terms of transitioning. I do think there's a responsibility of all parties to do things in a regulatorily-compliant way. So I do believe that that overrides and supersedes some of this contract dancing.
Q How much -- what regulatory regime are you referring to?
A The SEC.
Q Are you aware of any particular rule that would require the Debtor to provide services of any kind to the Advisors after the termination of the shared services agreements?
A No. I'm going based on experience.
Q Okay. So you don't have anything specific in mind; is that fair?
A I have specific historic experience --
Q All right. I'm asking you --

A -- of the --
Q I'm sorry.
A And then, I mean, I do have in mind, you know, based on our historic experience, like when we moved from State Street to SCI, I think it took nine months longer than anybody expected, and there wasn't a hard break in anybody's activities or attitudes toward each other. It was -- it delayed for issues that were -- some were beyond everybody's control, some of them were faults of the different parties, but in no case did anybody try and cause damage or allow damage to happen to regulated funds.
Q How long is the Debtor, in your view, how long is the Debtor obligated to make the data available to the Advisors? How long does this obligation stay in effect?
A I don't have a specific timeline. I did hear Seery say a few minutes ago that you would give it all and they would just keep a copy. I think to the extent that that happened, that cures quite a bit of it. But, again, the data had been held hostage as a negotiating point up until this weekend.
Q Hmm. Have the Advisors made arrangements to make the copy of the data that you just referred to?
A I don't know.
Q Do you know if there is a monetary amount that the Debtor is required to incur in order to continue to maintain the data until the Advisors can get a copy?

A I don't know, but I -- I don't believe it's material at all.
Q Okay. Have you done any analysis to -- if you don't know how long it's going to take to get the copy, how do you know how much it's going to cost to maintain the copy until it's retrieved?
A I don't, but large files up on the cloud in general are not that complicated to move around.
Q But it's your view, as the owner and controller of the Advisors, that the Debtor has a continuing obligation, notwithstanding the termination of the shared services agreement, to maintain the data for some indefinite period of time until the Advisors obtain a copy. Is that right?
A I'm saying there needs to be reasonable business transition in these circumstances. And I don't -- I don't -- I'm not the systems person, I don't know the details, but I know the costs are minimal. The monthly storage charge and -- what, is the Debtor going to delete everything to save $100 of storage charge on the cloud to intentionally harm investors? I mean, that's -- that's an alternative, but none of that makes any sense to me.
Q Let me ask you this. Under the shared -- under the transition services agreement that was fully negotiated as of last Tuesday or Wednesday, but for your access, was the whole issue of data access addressed in that document?

A I don't know. I assume so.
Q Okay. And do you also assume that the data issue would have been fully and completely addressed under the Option B that the Debtor accepted on Friday afternoon?
A I have no idea what was in Option -- I mean, I have no idea what was in Option B regarding the data.
Q Okay.

MR. MORRIS: Your Honor, I have nothing further.

THE COURT: All right. Pass the witness. Mr. Wilson?

MR. RUKAVINA: I think, actually, Your Honor, he's my witness on this one, since we're the Defendants.

THE COURT: Oh, I'm sorry. He's in Mr. Wilson's office. I got confused. Go ahead, Mr. Rukavina.

MR. RUKAVINA: No problem. No problem.

Mr. Vasek, if you'll please pull up Debtor Exhibit 2, and if you'll please go to Section 6.02. Well, make it so we can see 6.03 as well.

CROSS-EXAMINATION

BY MR. RUKAVINA:
Q Okay. Mr. Dondero, can you hear me?
A Yes.
Q Mr. Morris was asking you about data and return of data. I'd like for you to read with me Section 6.02, the second half, where it starts, "For the avoidance of doubt." Can you

see that, sir?
A Yes.
Q (reading) "For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any such books or records upon Recipient's request." And then there's a parenthetical about retaining a copy. Do you see that, sir?
A Yes.
Q Did I read that correctly?
A Yes.
Q Okay. And Service Provider here is the Debtor, and Recipient is one of the Advisors, correct?
A Yes.
Q Okay. And now let's quickly read Section 6.03. (reading) "Upon expiration or termination of this agreement, Service Provider will be obligated to return to Recipient as soon as is reasonably practicable any equipment or other property or material of Recipient that is in Service Provider's control or possession." Did I read that correctly?
A Yes.
Q Okay. And are the Advisors relying on these provisions when you mentioned in response to Mr. Morris that the Debtor had some obligation to provide them their own data?
A Yes. I -- again, I'm not involved in the details or the

specifics, but that's a very standard clause you'd expect to see in a service agreement, and I'm -- in some form or fashion, I'm sure D.C. and Dustin are aware of that and have negotiated accordingly.

Q Well, let's talk about that briefly. Mr. Morris asked you several questions with respect to the negotiations in the last few weeks on the transition services agreement and with respect to the weekend's events, to which you responded that you don't know the answer. Do you recall those questions generally?

A Yes.

Q And is that because you delegated those decisions to both D.C. and Dustin and outside counsel, or is that because you're incompetent?

A I've found that I am mischaracterized whenever I talk to Seery directly or deal with things directly, and there's too much of an intent in this case to make this personalized about me. And there was over a thousand line items to negotiate. Dustin and D.C. are very capable executives. And again, to avoid mischaracterization and personalization of this stuff, I let them handle it.

Q Okay. And you were also asked by Mr. Morris about the Advisors' current backup plan or divorce plan, whatever we want to call it, and you didn't know some of those answers. Is that also because you delegated that to Mr. Norris, Dustin

Norris?
A Yes.
Q Okay. It's not because you don't take an interest in it; it's because you delegated it to someone that you just called a very capable executive, correct?
A Yes.
Q Okay. And Mr. Morris asked you about certain events of last Tuesday and Wednesday. What was going on, sir, here in North Texas last Tuesday and Wednesday?
A Well, it was the ice storm. I couldn't get in touch with my lawyers on Wednesday, including yourself, you know, and people didn't have electricity, they didn't have coverage.
Q Is it fair to say, sir, --
A I couldn't --
Q Is it fair to say, sir, just to speed this up, that last Tuesday, Wednesday, and Thursday, the Advisors and you and outside counsel, primarily me, were having a very hard time getting in touch, and in fact, we really couldn't get in touch?
MR. MORRIS: Objection to the form of the question. I mean, if Mr. Rukavina wants to testify, he's welcome to do that, but I think he's leading.
THE COURT: I'll overrule.
THE WITNESS: The answer is yes. The world wasn't functioning --

BY MR. RUKAVINA:

Q Okay.

A -- in Dallas, Texas, or in my legal ecosystem.

Q Is it possible that, as a result of that, certain miscommunications between all of us took place? Misunderstandings?

A Lack of --

Q Misunderstandings?

A Yeah. A lack of communication, period.

Q And Mr. Morris discussed your physical presence on the premises. In fact, other than that one time that was mentioned when you went to the office for the deposition, you have not been at NexPoint or the other Advisor's corporate offices for almost two months now; is that correct?

A Correct.

Q Has that caused disruption to the business of the Advisors?

A It's definitely affected the efficiency. And again, I don't think it's compliant on a long-term basis for a registered investment advisor to not have its oversight employees, you know, or oversight most senior employee on staff.

Q Thank you, Mr. Dondero.

MR. RUKAVINA: Your Honor, I'll pass the witness.

THE COURT: All right. Mr. Morris?

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Sir, notwithstanding last week's weather, you knew that the lawyers for both the Advisors and the Debtor had reached an agreement on every single material term except for your access to the office, correct?

A Yes.

Q The weather doesn't change anything about that, right?

A Correct.

Q And the only reason that the Advisors refused to sign the agreement and this lawsuit was commenced is because you personally would not reach an agreement that didn't allow you into the offices, correct?

A I mean, yes, largely.

Q Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Any --

MR. RUKAVINA: Isn't it --

THE COURT: -- recross?

MR. RUKAVINA: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MR. RUKAVINA:

Q Isn't it also true, Mr. Dondero, that the same can be said about Mr. Seery, that the only reason why the Debtor didn't enter into that agreement was because he would not permit you

to be on the premises for the next couple of years?
A Yes.
MR. RUKAVINA: Thank you, Your Honor.
THE COURT: All right. That concludes Mr. Dondero's testimony for now.
Mr. Morris, any more witnesses?
MR. MORRIS: No, Your Honor. The Debtor rests.
THE COURT: All right. Mr. Rukavina, you may call your first witness.
MR. RUKAVINA: Your Honor, just to give you a heads up, I'm probably going to have an hour, hour and a half with Mr. Norris. So I don't know what the Court's plan is for working through lunch or not, but I'll just give you that so that you can make the appropriate decision.
THE COURT: All right. Well, I would like to go ahead and get started and get some of that accomplished before lunch. My situation is I'm hoping to get an update, but I have another 1:30 matter that I think is going to be very, very short, but I'm waiting to -- you know, my courtroom deputy was going to reach out to the lawyers involved in that matter. So my point is I may have to break from this for a few minutes at 1:30, so I'd like to time our lunch break so that it occurs a little bit before 1:30. I think that'll make this easier.
So let's go ahead and get started. You wanted to call Mr.

Norris?

MR. RUKAVINA: Yes, Your Honor. Dustin with a D, Norris.

THE COURT: All right. Dustin Norris, would you please say, "Testing, one, two"?

MR. NORRIS: Testing, one, two.

THE COURT: All right.

MR. NORRIS: Testing, one, two.

THE COURT: I hear you loud and clear. I'm not seeing you yet. Oh, there you are. Okay. Please raise your right hand.

MR. NORRIS: Hello.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Rukavina?

DUSTIN NORRIS, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Norris, can you hear me?

A Yes, I can.

Q Okay. Are you able to close the blinds behind you or somehow make that room a little darker?

A Let me reposition. Is that better?

Q Yes, thank you. For the record, sir, what is your name?

A Dustin Norris.

Q And what is your educational background?

A I have a bachelor's and master's degree in accounting from Brigham Young University.
Q Okay. Do you hold any professional licenses or certifications?
A Yes. CPA license, as well as FINRA License Series 7, 63, and 24.
Q Have you ever been disciplined by any regulatory body with respect to your licenses?
A No.
Q Have you ever had a crime, even a speeding ticket?
A No, never -- never had a crime. Not even a speeding ticket. For the record, I did get pulled over for not coming to a complete stop at a stop sign, but was dismissed through defensive driving. This is actually my first experience or interaction with a court other than the same interaction with the Court in December of last year.
Q Have you ever had your honesty or integrity challenged or questioned?
A No, I haven't.
Q Okay. And are you familiar with the two Advisors who are my clients here today?
A I am.
Q And how are you or why are you familiar with them?
A So, I am the executive vice president of each Advisor.
Q Okay.

A And --
Q Go ahead.
A I've been working for the Advisors since 2012.
Q So you have been employed by the Advisors since 2012?
A That's correct.
Q Okay. And what does your role as executive vice president entail?
A So, I oversee the marketing, sales, distribution, business development for our investment products, private placements, registered products, the funds that we've -- been talked about in this, this hearing.
Q Okay. And who do you report to?
A To Mr. Dondero.
Q Okay. And briefly, for the record, what is the business of these two Advisors that are Defendants today?
A Yeah. So, they primarily provide investment advice and management of various investment vehicles. That's private investment vehicles, it's public investment vehicles, publicly-registered closed-end funds, REITs, BDC, ETFs, and mutual funds.
Q Can you give the judge an estimate of the order of magnitude of all of the underlying investments managed or advised through all these vehicles that you mentioned?
A It's several billion dollars under management for NexPoint and Highland Capital Management Fund Advisors.

Q And is Mr. Dondero the fund manager, the guy in charge for all those investments?
A Most of them, yes.
Q Okay. And do you understand yourself to be a fiduciary?
A I do, both to the funds and to our Advisors.
Q Okay. What do you mean, the funds? And in particular, what -- what are the retail funds that Mr. Seery talked about earlier?
A Yeah. So, we have a number of publicly-registered mutual funds, closed-end funds, and ETF. And those are, as Mr. Seery pointed out, available to anyone that really wants to buy them, anybody that has a brokerage account or the ability to buy them through a financial advisor. And so those are the funds that I'm talking about. Primarily, they're 1940 Act-- registered mutual funds and closed-end funds.
Q Do any of those funds have their own boards?
A Yes. All of the '40 Act funds have their own board. It's an independent board of trustees.
Q What do you mean by an independent board of trustees?
A Yeah. So the majority of the board members are independent, and it's actually a -- 75 percent of the board members are independent trustees, as defined by the rules and regulations of the SEC. And so they actually hire us as the advisor. On an annual basis, they review our advisory agreements. And they control the day-to-day operation -- not

the daily operations, but control the oversight of those funds. And on an annual basis, they renew or choose not to renew our advisory agreements.

And so it is an independent process and an independent board. And each one of them have independent legal counsel as well that advises them on all matters that they incur, including everything we're talking about today.

Q Who is that independent legal counsel, if you know?

A Yeah. Blank Rome is the name of the law firm, and Stacy Louizos is the partner that represents them.

Q Does Mr. Dondero sit now, or since this bankruptcy case was filed, has he sat on any of these independent boards?

A He has not, no.

Q Okay. For these funds with independent boards, are you also any kind of employee or officer of them?

A Yeah. So, the funds themselves don't have individual employees. They have officers that oversee the operations. And I am executive vice president of each of the funds.

Q Okay. And as the executive vice president of each of those funds, who do you report to?

A So, I regularly report to the board on matters pertaining to the funds. I'm the liaison between the funds and the board on a number of matters. So I've been attending board meetings since December 2012 for these funds.

Q Okay. Have those boards met and had meetings in the last

couple of months regarding the shared services agreements and any transition thereof?

A Extensive meetings. They've held eight meetings since the beginning of the year, board meetings. And those weren't just short. Some of them were very long. Last year, there were 24 recorded board meetings, and a number of conversations in between, a number of discussions with their legal counsel, a number of discussions with the chairman of the board. So it's -- they've been extensively involved through the process.

MR. MORRIS: Your Honor, I move to strike the hearsay that we're hearing here about discussions that the boards had with other folks. If Mr. Norris has personal knowledge, that's one thing, but I think he's gone well beyond that.

THE COURT: Okay. Response, Mr. Rukavina?

MR. RUKAVINA: I'm not sure what testimony Mr. Morris is talking about, third-party testimony. I think the witness just said that the board has met many, many times to discuss the issues that are up for today.

THE COURT: Okay.

MR. MORRIS: And I think to the extent that the witness participated in such meetings, that's fine, he can specifically testify about that, but I don't think he should be otherwise testifying about what other people did who aren't here today to testify as to their own personal conduct.

THE COURT: Okay. Okay.

MR. RUKAVINA: I can rephrase the question, Your Honor.

THE COURT: I sustain. Rephrase.

BY MR. RUKAVINA:

Q Have you personally participated in meetings of those boards, Mr. Norris, at which those boards and you discussed the transition services agreement potentially being negotiated with the Debtor and the shared services agreements that were being terminated by the Debtor?

A Yes. I participated in eight board meetings this year. There's been five of them in February alone. And there were 24 board meetings last year, and I was a participant in each one of those meetings.

Q Okay. And did you advise those boards at some point in time about the termination of the shared services agreements?

A Yes, we did.

Q When did you start advising those boards that that was something that may happen or that has actually been noticed as happening?

A So, throughout the fall last year, I think the expectation was that there would be a -- I mean, obviously, there had been a plan filed with the Court. That was discussed with the board. Mr. Seery testified that he joined the board meetings in the fall and in the summer and talked about those. The discussions were around the transition of services. There was

discussion about a new company. And so the discussions were ongoing.

When the filing actually -- from when the filing actually happened, that was ongoing, of how would we be able to continue the services. And so, from the beginning, those were discussions that were had.

We did notify the board when the termination occurred. As well, we had a board meeting, a one-and-a-half day board meeting on December -- I think the dates were December 10th and 11th -- where the termination was discussed in detail.

Q Now, obviously, the Debtor sent notices of termination of these shared services agreements in late November. You're obviously familiar with that, right?

A Correct.

Q Separate and apart from the Debtor's decision to terminate these agreements, were you and the Advisors considering terminating these agreements?

A We were. We had discussion --

Q Let me ask -- let me ask the next question. I appreciate you answering, but let me -- let me do my job. When were the Advisors considering making such a move, and why?

A This was in the October-November time frame of last fall, as the -- particularly around the services we had been receiving related to the shared services agreement and the payroll reimbursement agreements. We didn't think that the

service was fulsome, we didn't think we were getting the service that was under the agreements, and the service had dropped off.

And in particular, the -- there was -- there were conflicts involved between the Debtor and between the service providers, particularly legal and compliance services, given all that was going on. And there were a number of matters they couldn't participate on. Historically used their legal and compliance services significantly.

And that, in addition to discovering that there were a number of employees we were reimbursing for in payroll reimbursement agreements that were no longer employed by the Debtor, yet we were paying for the full services.

So, with that, we had discussions internally about if and when or how we could terminate them, and --

Q Let me stop you.

A -- termination --

Q Let me stop you. Ultimately, I take it, the Advisors never tried to terminate these shared services agreements, correct?

A That's correct.

Q Why?

A There was an order specifically that Jim or anybody related to Jim could not terminate an agreement with the Debtor. And he specifically pointed that out to us when we

discussed this, and so we knew we couldn't take action. There was also -- counsel discussed that the stay with the Court --

Q Let's not -- let's not talk about counsel. Let's not talk about counsel, --

A Sorry.

Q -- Mr. Norris. Okay. But the point is, at least as of last October, would you agree, that the notion that these agreements would be terminated by one or the other parties was known to you?

A Yeah. So, the -- we expected that at some point there would need to be a termination. I -- that was discussed. And there was a plan, and I'm sure we'll talk about it, but a plan to transition the employees and the services to a new company and to new service providers. And I think both sides had been working for quite a while to ensure there was a smooth transition, and we expected that to happen. But there would need to be a termination of that agreement -- either a transfer of that agreement or a termination to a new company that would be providing new services, or transferred those services directly to us.

Q So I'd like you to pick what word you'd like to use, but what I've called a backup plan in my objection or what Jim called a divorce plan in his testimony, how -- what shall we call this backup plan?

A All-contingency plannings. Or we'll call it backup plan.

Q Okay.
A I think that works.
Q So is it fair to conclude that since at least last October, the Advisors have known about the possibility of having to do a backup plan?
A Yeah. And I think even before then we knew there was a possibility. But the plan, the strong Plan A of everything that had been communicated to us by the Debtor and their employees was that the intent was to transfer all those services to a new company, with the same individuals providing the same services. There was no significant indication to us that that would be any different.

Yet we still had then begun planning, well, what if, right, Plan B was implemented or began many months ago and in recent weeks, in recent months, it's been expedited to be able to ensure that we have a solid Plan B. But yes, it's been ongoing for months.

Q So if there is an implication or allegation made that the Advisors were negligent with respect to transitioning from the shared services agreements because they didn't start taking it seriously last August or September, would you agree or disagree with that allegation?
A I would disagree, because there were assurances or discussions that made it very clear that everybody was working together towards a Plan A. Yet we were still discussing -- I

know Mr. Seery mentioned he's a Boy Scout. I agree in that. Be prepared. I'm an Eagle Scout. And so we have been preparing, but the preparations weren't needed in the manner that we thought they were needed until in the last month, right, and -- because everything was moving in the right direction for a clean transition plan, and even up until last week.

However, the last month and a half we've had to prepare in earnest for Plan B, and that involved a tremendous amount of effort. And I'm happy to go into that now. But yes, there's -- there has been -- we have 80 employees across our Advisors, and almost every single one of them have been involved in Plan B, and a group of about 18 of us for several weeks, planning, game-planning, and thinking through all the contingency plans.

Q Well, let's round off the discussion about these boards. Did you make the boards aware since last fall and into this year about both the ideal plan, which was, I guess, you know, an agreement with the Debtor, but also a backup plan, in case?

A Yeah. So, in -- in August, --

Q When --

A -- when the Court -- oh, sorry, yeah.

Q No, no. Well, go ahead.

A Go ahead.

Q I was going to ask you how and when, but you -- you -- go ahead.

A Yeah. Yeah. So, up until August, there was, I think, a view that there would be a negotiation, a negotiation reached. Things had been pushing along. We know that in August there was a plan filed with the Court. And Mr. Seery even joined our board meeting. And so in that meeting he discussed with us, as well as the legal team of the Debtor, discussed with us the Plan B at that point, which was defined with the Court. That the goal and objective was a grand bargain, as he explained it, and that he -- that was the Plan A. But even under either plan, there would be a transition of services. He joined again, I believe, one or two more times, to additional board calls that fall. There was mediation we were aware of and had discussed with the board to help resolve some of these items.

And so, you know, just in the same time frame Mr. Seery shared earlier, it corresponded with those discussions that we were having.

In addition, D.C. Sauter and other individuals at our firm, as well as individuals from the Debtor, were working throughout the fall and into the winter on the various discussions on transition. And so that's --

Q Did you hear Mr. Dondero testify about over a thousand line items?

A Yeah, I did.

Q Do you know what -- what is he referring to, do you know?

A So, within the transition services agreement, there -- there's about 11 or 12 pages in an exhibit that are a number of agreements. That's -- that's the remaining agreements that we've agreed that are needed. He may have had a little hyperbole in his thousand, but there is -- there were -- there was at least a thousand points of discussion that had to be resolved. Most of them were minor, right, and we came to a quick agreement on most of those, and there was only a handful of things that needed to be resolved. And because of that, I felt comfortable and confident, particularly from the middle of January on, where I became much more involved, that there would be an orderly agreement on those points.

Q Did you tell the boards that the Debtor would enter into the agreement that had been negotiated only on the condition that Mr. Dondero not be permitted to be on the premises?

A Sorry. You said the Debtor would enter into or -- oh, that he wouldn't be permitted onto the premises?

Q Well, we'll go more -- we'll go in detail later, but I want to round off the board discussion here. Obviously, you heard from Mr. Seery and in my paper that we had an agreement done except for one issue, right?

A Yes. Yes.

Q And that issue was whether Mr. Dondero would be on the premises or not, right?

A Yes.

Q Did you discuss that with the board, that issue?
A We did. We --
Q And did you get any instructions from the board that have led you to do anything other than you've actually done?
A No. No, we -- they -- the board, as I mentioned, we've had eight board meetings this year discussing in detail our backup planning. They understood the Jim access issue and they felt comfortable with our backup planning. But also, you know, our view, and I think that they shared that, that he should have access --
Q Well, let's stop there. Let's stop there. Let's stop there. I'll ask -- I'll ask more of those questions later. I don't -- I don't want to invite Mr. Morris's objections here based on you talking outside the scope --
A Yeah.
Q -- of my question. Let's move on now to the shared services agreements themselves. You heard Mr. Seery's characterization of them from a top level. Would you agree with his characterization, or how would you characterize what the shared services agreements actually did?
A Yeah. I think he called them middle- and back-office services. I think, to add a little bit more to that, it's IT services, including the systems and computers that we all use. It's HR. It is accounting and back-office services, many of those for our advisors and some of them for our funds. We do

outsource a number of accounting functions to other service providers, and have for years, and they provide an oversight function for the accounting and the books and records for our funds. They also provide tax services and things like that for our advisors and funds.

Q Now, in --

A And as well legal and compliance services. Legal and compliance services as well.

Q In our exhibits that have been admitted are two employee or payroll reimbursement agreements. We don't have to go through those in detail, but you're -- are you aware of those agreements?

A I am, yes. And I would add that -- and those are in addition to the services that are provided under the shared services agreement. Those are front-office or investment services.

Q Okay. Now, did there come a time when a dispute arose between the Debtor and the Advisors as to how much an amount was owing by the Advisors to the Debtor under the shared services agreement?

A That's correct.

Q What was the basis of that dispute?

A Yeah. So, in particular, as I mentioned earlier, certain of the services we believe we are no longer receiving. Many of those related to legal and compliance. We've had to shift

a lot of those responsibilities in-house and to outside counsel.

And particularly related to the payroll reimbursement agreements, we hadn't realized that we were overpaying for employees that -- and again, they're payroll reimbursement agreements for employees that are dual-hat employees, dual employees of the Debtor and our Advisors, providing investment services. And there's a list or exhibit that shows the number -- the actual employees with their names and the allocations of their time. And so two-thirds of those employees, when we realized or saw the list or received the list on the exhibit in the agreement, which was around the end of November or early December, two-thirds of them are no longer employed by the Debtor. And we continue -- and they continue to bill us based on historical averages, not based on the actual amounts.

So we inquired of that, we asked for email --

Q Let me -- let me pause you.

A Oh, sorry.

Q Let me pause you.

A Yeah.

Q Let me pause you. So, during the negotiations with the Debtor in December, January, and February, did you ask for any kind of clarification or reconciliation of these amounts?

A Yeah. So, on multiple occasions, we asked for the detail of what they were invoicing us for, and then, in particular,

in late January and again a couple times in February, I asked multiple employees for reconciliation. Two reconciliations. One was a reconciliation of the employees that they were charging under the expense -- I'm sorry -- payroll reimbursement agreement, to the actual amounts that they charged us, and then separately I asked for a reconciliation of amounts billed to us under the shared services agreement to what they actually incurred on their end.

And the rationale for the latter was because the expense reimbursement -- or, sorry, the shared services agreement for Highland Capital Management Fund Advisors is actually a cost plus a margin of five percent. So they are to charge us what their costs are plus a margin of five percent, yet they continue to bill us the same amounts based on historical averages.

And so the amounts in dispute were particularly in the last few months, where those amounts hadn't changed and where we raised this concern.

Q Did you get a response or a reconciliation from the Debtor on these overpayment issues?

A No.

Q Okay. Now, when did you become -- well, you heard Mr. Dondero say that he delegated the primary responsibility for a transition of services to you, correct?

A Yes.

Q When was that?
A Yeah. So, January -- in mid-January, I became very involved. I had less of authorization prior to that. I was involved in some of the negotiations on contracts and things like that in early December. Had a meeting with Debtor employees on that, and that they had been working on for months, along with Mr. Sauter. Mr. Sauter had taken more of an active role prior, in December and October and even September, and before -- before all that.

So, in January, mid-January, they actually came to me on January 12th with permission from Mr. Seery to interact directly with me and to negotiate the additional terms of the transition with me. And Jim authorized me at that time to move forward.

Q Okay. Did you discuss with Mr. Seery whether you would be permitted to talk to Debtor employees as part of this?
A So, I did not talk to Mr. Seery, but I talked to J.P. Sevilla, Brian Collins, David Klos, and Frank Waterhouse, who they had told me explicitly that Mr. Seery had authorized them to negotiate with me.

Q Okay. Was there some impediment prior to that authorization to being able to discuss Newco issues with the Debtor's employees?
A So, there were a number of things. And as this Court is very well aware, that three weeks prior to that, there were a

number of events. There was a TRO for Mr. Dondero and our Advisors, there was a preliminary injunction for Mr. Dondero, and there were claims of interference. And we took a very cautious approach and didn't want to interfere in any manner. And so in these regards, and in many, I mean, everyone was very cautious. And so those were -- those were steps that it was challenging.

In addition, I should note that Mr. Scott Ellington was helping the Debtor and negotiating this transition agreement before he was let go in early January.

And so with all those events, we had to take a more cautious approach to communication.

Q Okay. And approximately when did Mr. -- did the Debtor, to your satisfaction, authorize direct interaction with the employees so that you could negotiate a more fulsome agreement?

A Yeah. It was when they called me on January 12th --

Q Okay. And is it fair to say --

A -- and notified me of that.

Q Is it fair to say that that's the date when the negotiations really got going?

A Absolutely, yes. Yeah.

Q Okay. Did you ever ask the Debtor for a draft agreement or term sheet or whatever you want to call it as far as a transition of services would be?

A I did, on multiple occasions.
Q When did you finally receive one?
A So, it was on January 28th, which was the last business day of the shared services agreement term. Sorry, January 29th, a Friday. And January 12th, we engaged, as I mentioned. We came to quick resolution on various items. And we began asking for a term sheet. I actually asked them whether they -- who they wanted to draft it, their counsel or our counsel. They checked with their counsel. I thought it was a good idea and agreed that it was a good idea for their counsel to draft it, because, as they put it, this was their baby for many months. They had -- because the Debtor employees and DSI, their consultants, had been very involved, in taking 15 months to that point, in figuring out what contracts were needed, analyzing what needed on a --
Q Let me stop you.
A -- go-forward basis --
Q Let me stop you, --
A Yeah.
Q -- Mr. Norris. The point being, it was agreed between you and the Debtor that the Debtor would take the first stab at a term sheet, and you received that on or about January 29th of this year?
A Correct.
Q Okay. Now, obviously, the Debtor extended the

termination, first to February the 14th, and then, second, to February 19. Correct?

A That is correct.

Q Okay. Did the Advisors pay the Debtor for those delays, pay cash money to the Debtor for those delays?

A We did. And we -- yes, we did.

Q Okay. And without belaboring the point or taking any more time than necessary, the numbers that I have in my objection are that, for the first extension, we paid --

A I believe it was around $560,000.

Q Thank you. Thank you. And for the second extension, do you recall?

A Around two hundred -- just over $200,000.

Q Okay. Why were those extensions necessary?

A They were necessary for multiple reasons, but it was necessary to get a transition agreement completed, and that was our goal and intent. It was also necessary to protect our funds and our investors, to have a smooth transition. But primarily, we were in a great spot until -- up until January 29th, we hadn't received a term sheet. So we couldn't negotiate a term sheet that was pages long, with schedules that were 10 or 15 pages long, in a day, and so we asked, in good faith, can we have an extension? And they also were agreeable to that, and it made sense for all parties.

Prior to that receiving the term sheet, though, there were

concerns that we would lose those services. They threatened to pull those services. However, at the end, all parties agreed.

And then the extension, the second extension was needed in order to continue those -- those agreements, negotiations as well, as they had pushed the termination date of the employees from the anticipated January 31st to January 19th, and so we asked that they moved the termination date of the shared services in line with the termination of the employees, because our understanding was those employees would be transitioning to a new company providing those same services.

Q Okay. Maybe I misunderstood something because of the video nature of this, but you mentioned something like pushing the termination of the employees from January 30th to January 19th. Just for the record to be clear, because, again, I might have misunderstood or misheard, but when was the Debtor going to terminate nonessential employees originally and up to what date was that pushed?

A Yeah. So our understanding is they were going to terminate them on the 31st of January. They did end up receiving termination notices that said January 19th. And so that was pushed from what our understanding was, but that was the first time I believe the employees received termination notices for the 19th. Thereafter, after we negotiated an extension of our shared services agreement one more week

before the 14th, to the 19th, the very next day they extended the termination dates to the 28th for all employees, which would extend it one week beyond the negotiated termination date for the shared services agreement.

Q Well, here's my fundamental question. To your knowledge, was that the Debtor's separate business decision as to when to terminate employees or did you request that the Debtor extend it to February 28th?

A That was their separate business decision. Um, --

Q That's fine.

A That was -- that was their separate business decision to extend it. We didn't even anticipate them extending it --

Q I just want the record to --

A (overspoken)

Q I just want the -- I just want the record to be clear, Mr. Norris. Let me direct you, please.

A Yes.

Q That that decision to extend the employee termination was not at our request?

A Correct.

Q Now, let's talk about these negotiations a little bit. To go back to this agreement that we had other than the Dondero access issue as of last Tuesday, you agree that there was an agreement other than the Dondero access issue as of last Tuesday, right?

A Yes, that's correct.

Q Okay. How, if at all, was the amount of money that we owed to the Debtor issue resolved between you and your counterparts at the Debtor?

A Yeah. So, they, at the end of January, demanded that -- and this was the first time that I was aware of the extent of the amounts or that they were going to include payment of past-due or disputed amounts as part of this agreement. That came in on, I believe, January 27th. And they demanded we pay it or they would cut off all shared services effective Friday, the 29th. And that included our access to the -- to our websites, our domains, our emails. It would include access to the office. And so that was a major item.

They demanded five point -- approximately $5.2 million in payments from our Advisors and a number of other entities. And so, as part of that, that was a -- that was a problem, because we can't speak for the other entities.

In addition, now we were commingling a financial dispute with the peaceful transition of services. And so that was resolved. We agreed with the Debtor and ultimately agreed that, okay, we would pay these disputed amounts as part of this, reserving our rights for any additional -- any additional argument of that for another time, but we would agree to pay our portion, which is approximately $3 million, our disputed portion of what they were billing, with $1

million up front. They wanted it all up front, but they were willing to allow us to pay $1 million up front and the remainder over 14 months.

Q Okay. Going back to this agreement save the one issue, how was the employee issue resolved?

A Yeah. So, the employee issue was an important one, and it had been. These employees had been working hard providing service for our funds and advisors for a very long time. The plan all along was to transition them, as Mr. Seery said, to a new entity. It would either by controlled by Mr. Dondero or by the employees themselves.

And so we needed -- we need those services, right, in the long run. And so that was resolved in that there would be a new company formed, which we've been calling Newco. It would be employee-owned. Initially, would be providing services exclusively to our Advisors, but then would have the ability to go out and provide the same services to other companies. And so we found that as -- from the beginning a great solution. And the principals of what would become Newco have been interfacing with us and with Mr. Dondero regarding the combination of those services.

So, as part of this agreement, the services would transition directly to Newco, with the same people providing the same services in the same seats.

Q Okay. What about -- just so that the record is clear,

there's a large corporate office over at Crescent Court here in Uptown Dallas, right?

A That's correct.

Q And the lease, obviously, just to speed things up, the lease is in the name of the Debtor, but for many years NexPoint and other employees have been on premises, correct?

A Yes. We've been there since they opened the space. I believe it was February 2012 when we moved there. Maybe February 2011. But our Advisors have been there in that space since then.

Q Okay. So how was the future of this lease and resulting lease payments resolved as part of this tentative agreement as of last Tuesday?

A Yeah. So, it was a 75/25 split, where the Debtor would pay 25 percent and we would pay 75 percent for the remaining lease term, which was approximately 14 months.

Q And approximately how much would our 75 percent over 14 months have amounted to?

A I believe that's approximately one -- between $1-1/2 and $2 million.

Q Okay. Now, we'll talk about this in some detail later, but there are certain third-party software and information providers -- Bloomberg, for example -- that the Debtor uses that we have access to under the agreements but that the Debtor must pay the third parties for, correct?

MR. MORRIS: Your Honor, I just object. Again, if Mr. Rukavina wants to testify -- this is not a question. This is testimony.

MR. RUKAVINA: Your Honor, --

MR. MORRIS: I mean, there's no foundation. There's nothing.

THE COURT: Sustained.

MR. RUKAVINA: Okay. Very well.

BY MR. RUKAVINA:

Q Mr. Norris, does the Debtor -- or, did the Debtor provide, pursuant to shared services agreements, access to third-party software platforms?

A Yes. They did. There was a number of agreements --

Q Stop. Stop.

A -- that were --

Q Stop. Stop. Stop. Were these some of the things that you were negotiating with the Debtor as you were negotiating that transition of services?

A Yes.

Q Name a few of the most important of these third-party service providers that you were negotiating with the Debtor.

A Yeah. Bloomberg, particularly the order management system of Bloomberg. Oracle, which is an accounting system, to name a few. Those were the most important ones.

Q Describe with some more specificity, please, what the

order management system is. OMS.

A Yeah. An order management system is an operating system that allows you to trade various funds and asset classes all through one system. And so we have a number of funds, we have a number of asset classes we trade, which include loans, bonds, and equities. And so trading all of that through a system that then sorts it, allocates it, and does it all in an efficient manner -- in addition, it incorporates various rules and metrics for trading and efficiency -- so it's very customized, it's very customized for the rules related to our funds, very customized for the rules related to what we trade for our Advisors, and it's been used primarily by the traders from our Advisors or employed by our Advisors.

So that's what the OMS is. And it's Bloomberg that has the software, and it's been customized directly with Bloomberg.

Q Okay. Did you come to an agreement with the Debtor as to how the future costs or license fees for these platforms and services would be allocated between the Debtor and the Advisors?

A We did. It would be, for most of them, which is approximately a hundred contracts, is about -- is a 60/40 allocation. We would pay 60 percent and they would pay 40 percent. There are some of them that they said they didn't use that we agreed we would pay a hundred percent of. But

most of them are a 60/40 split.

Q Okay. And did you calculate approximately how much in payments pursuant to that formula we would make, the Advisors would make in the future under the draft agreement?

A Yeah. So, it is approximately $240,000 per month, inclusive of the lease. So, exclusive of the lease, it was about $120,000 per month.

In addition, there were one-time payments for annual payments, which I think was around $200,000 or $300,000.

So it is a -- it's a couple million dollars over the life of the contract.

Q Okay. And to fast forward to last Tuesday, the one issue that had not been resolved was Mr. Dondero's physical presence on the premises, correct?

A That's right. That's right.

Q Was this a last-second issue or had this been discussed for some time?

A No, it wasn't a last-second issue. We actually included it in our first multiple drafts or responses to their term sheet. We got the term sheet on the 29th of January and it did not include any specifics around Mr. Dondero's access, but we added that in early drafts of the term sheet and it was removed by their counsel and reinserted in the -- I know there was discussion between counsel on various aspects of it. It was removed from what was their final version, and maybe even

the draft before that, but it was added in by us again as -- for all the reasons we mentioned before. We thought it needed to be stated explicitly in the agreement. And the attorneys had discussed that it could be handled --

Q Let's not talk about -- yeah, let's not talk about the attorney discussions.

A Okay.

Q You heard Mr. Seery say that the Debtor refused to permit Mr. Dondero onto the premises and you heard him say why. Did the Advisors offer any compromise on this access issue?

A We did.

Q What was that offer?

A So, we offered to -- and in all this, it's thinking, what are the employees from the Debtor that are going to be using this? We haven't even really received a good understanding of who that is.

However, we offered to take approximately 25 percent of the office. And there is a clear area where we could build a wall. They could have their own separate access, their own separate restrooms, their own separate entrance, where they wouldn't have any involvement or connection to us. And so we also offered with that, whenever you need access to the other portion, let us know. We can even have Jim Dondero leave, if you're concerned.

And so that was one option. We could build a wall. And

we even put that in the written agreement. We will build a wall at our expense. That was the -- that was the -- what our offer was.

Q How did the Debtor respond to that offer?

A They removed it from the agreement and they told us that we had until 6:00 p.m. to sign their agreement with no Dondero access or they would file a lawsuit.

Q And this was last Tuesday?

A This was Tuesday.

Q Okay. Were you able to respond by their deadline, which they -- then they later moved to midnight of that same day?

A I'm not sure if there was a response. It was handled between attorneys. Our counsel. I had -- just as Mr. Dondero stated, I had rolling blackouts in my home from 2:00 a.m. on Monday until Thursday. I -- I and D.C. were aware of the offer, as was our counsel, and I believe there was a -- and I believe there was a response from our counsel in time, but I'm not -- I wasn't certain at the time. I knew that, as well, there was an extension, but I didn't find out until the next day because I did not have power.

Q And ultimately, the Debtor either rejected that last offer or let the offer expire by not accepting it. It doesn't matter which. But is that accurate?

MR. MORRIS: Objection to the form --

THE WITNESS: Yes.

MR. MORRIS: -- of the question.

MR. RUKAVINA: Your Honor, I'll ask it a different way.

THE COURT: Sustained.

MR. RUKAVINA: I'll ask it a different way.

BY MR. RUKAVINA:

Q Did the Advisors accept the Debtor's last offer made on Tuesday of last week, the one you just referenced?

A No.

Q Why?

A As explained, I think, clearly by Mr. Dondero as well, it did not have the provisions that we thought necessary. And when you think about this, we were going to be required to pay significant dollars for an office space where our president and principal was not permitted.

We had an option to go other -- elsewhere, right? Here, we're in a separation experience. This agreement that they had, they had told us early on it was fill-or-kill. They told us early on that it was not *a la carte*. When we pushed them on that a couple weeks later, they said, well, the only thing that's not negotiable is the office, right? If you want everything else, you've got to have the office. That was in a discussion with various attorneys on the phone.

And so, with this, we knew this was a kind of take-it-or-leave-it offer, and we could have gone elsewhere. And we had

already been preparing, in the event that we couldn't have a deal, to go elsewhere. And so, with that, if they were not going to permit -- which we thought was very reasonable, specifically with all of the additions, you know, the consideration -- sorry, my battery is about to die on my computer. I'm plugging in the charger here.

So, with all of those considerations, we couldn't sign that deal, especially as -- without that key access.

Q You personally, Dustin Norris, now, personally, as an officer and a fiduciary, did you think that it was appropriate or inappropriate that Mr. Dondero be allowed on the premises in the future?

A I thought it would be appropriate for him to be there.

Q Why?

A So, I've been working for Mr. Dondero for a long time. I know the way he operates, and I know that the way that he manages his organization, which is a complex organization, he needs to be there in person. We haven't been in the office because of a -- a disregard for COVID. We are an essential business, and we have been, as a financial services business. But the way we operate is very in-person, and that's how Jim operates.

In addition, I've never heard of a situation where the principal or the control person of a company -- there's no question that Mr. Dondero controls the organization -- cannot

be there in person.

And so, from that perspective, given and knowing all of our other plans, given the ability for many people to relocate, given the abundance of office space elsewhere, if we were forced to accept an agreement that did not allow Mr. Dondero for the next 14 months to be there in person, it was -- it was going to be a challenge for us from a business perspective.

Q Do customers or investors or prospective customers and investors come to the offices historically to meet with the Advisors and their personnel?

A Pre-COVID, yes. Regularly.

Q Okay. Would Mr. Dondero participate in those meetings?

A He would, yes.

Q Were you concerned that him being unable to participate in those meetings would affect future business and profitability?

A Yeah. I think if you look at this -- key investors come in and see this big cavernous open office and ask why the manager of the funds is not even allowed to be in your office, you know, or is that impacting the way you operate, then yes, I think he needs to interact with people that are coming through the office.

Q He has not been in the office since about the beginning of this year; is that correct?

A Correct.

Q Do you feel like that has caused any harm or disruption to the Advisors' business?

A Yeah. I don't know that I would characterize it as harm, but it has been disruption, right? I'm -- the way that we operate, having Jim there, being able to have consistent, regular meetings in person, which for me were multiple times per day on a regular basis, and many others, it was disruptive. Being able to reach him, how to reach him. Do I need to get in my car and drive to another location where he's at, which I did on many occasions. We typically get people together very quickly in groups: Let's go talk to Jim. And that becomes a challenge to get things done quickly and in an efficient manner.

So it has been a disruption, and it's not something that we would desire to do, if we had the choice, for another 14 months.

Q Okay. Now let's talk about the backup plan, please. I guess let's start with: What is our backup plan? Well, let me start with this.

A Yeah.

Q Do we have a backup plan?

A And I think the key now, instead of calling it a backup plan, is an operating plan.

Q Okay.

A For --

Q Do --
A -- several weeks, --
Q Let me -- let me -- that's a very good point. Prior to a few days ago, did we have a backup plan in place for what we would do if we were not able to enter into a transition services agreement with the Debtor?
A We did, yes. And --
Q Since when -- let me -- let me direct you. Let me direct you. Since when did we have that backup plan?
A Yeah. So, the backup plan -- the backup plan began many months ago, but as I mentioned earlier, it began in earnest in the end of January, right? And over the last month especially, we've been putting in place all of the required systems and processes and procedures in order to continue doing all the duties under our advisory agreements. And that includes all of the services that are provided for the Debtor -- by the Debtor.

And our backup plan, a big part of that included the transition, and it still includes the transition of those employees to Newco. We are in active negotiations and believe that Newco, once those employees are terminated on the 28th, they will be able to perform their same duties on March 1st of this year.

And so we expect those services to happen. In the interim, we've prepared for and have contingency plans in

place in order to do all that we need to do. We have systems and servers that are set up in an SEC-compliant manner. We are operating on a new email system. We have our files --

Q Let's go --

A -- that are essential.

Q Let's go step by step here so that the judge --

A Yeah.

Q -- has a very clear picture of what all is involved. So I'm going to try to break it down. I think both you and Mr. Seery talked about back-office and middle-office services. What are those? What does that refer to in the industry?

A Yeah. So, back-office -- back-office and middle-office includes HR, IT. Accounting is a big part of that back-office services. And in regards to our funds, it is the oversight of the accounting process on a day-to-day basis and on a monthly and quarterly basis, for annual reports, for audits. It's the day-to-day valuation services that are provided to our funds. And so those are the key functions. It's legal and compliance as well --

Q So let's --

A -- the Debtor has been providing for our funds.

Q Let's go step by step. So let's assume that I'm -- I want to invest in your fund. In a retail fund, pardon me. Am I able to pop up daily or almost instant information regarding its assets, its valuations, et cetera?

A Yes. So, most of our --
Q Is that -- is that --
A -- funds --
Q Is that part of what you were just describing about valuation and accounting services on a real-time basis?
A Yes, it's part. It's more of the oversight function.
Q Okay.
A We outsource the daily processing and NAV-striking, or the actual accounting, day-to-day accounting, to an outside third party called SEI. And the Debtor had provided oversight function as well as valuation services for that daily accounting process.
Q Okay. So the Debtor, for accounting, wasn't actually crunching the numbers every day; it'll -- supervising third parties. And that's been the historical norm, correct?
A That's correct. I actually --
Q Now, let's --
A -- years ago filled that function.
Q Okay. So let's -- so how are we, the Advisors, today, compensating for the lack of the Debtor's back-office and middle-office services, or how are we transitioning from that today?
A Yeah. So, a key part of that is the transition to Newco, right, and as well that is planned for next week. However, in the interim, we have very good plans and processes in place.

We have -- on the accounting front, on a day-to-day basis, we have added our key personnel, our accounting teams, which has been actually bulked up in recent years. We have a number of publicly-traded REITS that have SOX-compliant processes and procedures.

And the CFO of our real estate platform, Brian Mitts, used to be the principal financial officer of all of these funds. He continues to be and operates as the principal financial officer for one of them, or had been throughout all of this time, and is a participant in all of the board meetings and regular valuation processes. In addition, he has a team of accountants.

And so they are now copied on all the day-to-day accounting emails from our third-party providers. They have been for several days.

In addition, as a backup measure, we hired on a consulting basis the former senior accounting manager who worked until April of about two years ago for the Debtor, providing these same services to our funds. And so, on a contract basis, he's there as needed.

In addition, we have received from the Debtor a list of employees, if they're needed, that we could hire. There's about seven of them in the accounting and operations functions. They gave us permission last week to do so. And one for valuation.

So, those functions, if they're needed in the interim period before Newco is in place, we'll have those.

In addition, from an IT perspective, which is an important part here, they maintain -- the Debtor maintained our systems and servers. We have contracted --

Q Let's not -- let's not -- we'll talk --

A Yeah.

Q We'll talk about -- we'll talk about IT momentarily.

A Yeah.

Q You mentioned -- so you just discussed accounting. What about -- and I think you -- did your discussion right now include transition of the valuation services?

A Yeah. So, in that regard, --

Q Okay. What about -- what about -- what about legal, transition of legal services and compliance, regulatory compliance?

A Yeah. That -- as I had mentioned before, the services we had been receiving from the Debtor have slimmed down dramatically, and particularly around legal services. We still had been receiving significant support from Lauren Thedford, who is a very reliable team member of the Debtor. She was also serving as an officer of the funds, of our funds, until Friday, when she resigned. But we have in place with SEI, they provide admini... regulatory and legal admin services to us, and have all along. They're prepared to step

up in her absence.

And also K&L Gates, who already serves as advisor counsel and fund counsel, is set and has been already picking up the slack and prepared to do anything that Lauren was doing. She is a valuable team member. We hope that as we transition to Newco that she'll be able to, as mentioned earlier, step back on as an officer of the funds.

Q Now let's talk about IT, information technology. What services was the Debtor providing to the Advisors in the nature of IT under the shared services agreements?

A Yeah. So, our IT equipment, our computers, our screens, were their property, or at least that's -- that's the -- that's what -- it's in their name. Not all of it, but some of it. In addition, they provide IT support. So if we have an IT problem, we need to call the IT guy, they provide that. They provide support for the servers. They own the servers. They own the system. Or at least that's what -- that's what their -- their claim is. And so they provide all of those kind of IT functions for us, or had until this past weekend.

Q Does that include email?

A That's right. They -- they --

Q Does that include -- hold on.

A We have a number of --

Q Hold on. Hold on. Does that include Internet -- does that include Internet connectivity?

A It included the Internet connections at work. It included the phones. It included our emails and email servers and the --

Q What about --

A -- domain that, even though they're in our names -- yeah.

Q That's what I was going to ask next. What about domain names? How are those handled?

A They have claimed that those are theirs as well, that the domains we use for our websites and for our emails are theirs.

Q Okay. And what about electronic data, just a wealth of internal books and records, kind of corporate data? Did the Debtor provide --

A Yeah.

Q -- any services with respect to that?

A Yeah. So, they retain all of the data that we use on their networks and servers, and all of that is stored on shared drives and on their system or on the computers that are owned by them. And so even though they're our books and records, I believe you read earlier the provisions of the data provision, and so that is all stored on their systems.

Q Okay. So we just kind of discussed the universe of the IT services that the Debtor provided. Did we miss anything or is that kind of the stuff that really matters?

A I think that -- I think that covers the --

Q Okay.

A -- the main items.
Q How is that being handled by the Advisors today, or how is that -- or has it been transitioned from the Debtor?
A Yeah. So, largely, we are handling it on our own and through a third-party provider. So, we have bought and purchased our own domain names. We've transitioned our emails to those new domain names. We have made copies of our data, or a lot of our data. There's still some stuff we need. But our essential data. And we have transitioned to a new server and systems that are -- that are secured and perform through this third party who does this for a number of asset managers, for endowments. And the way he has set it up is in an SEC-compliant matter. So, dual authentication. All of the things that you would expect from a security standpoint are in place. And we are operating starting on -- we were mirroring for a couple weeks, but on our own beginning on Saturday, when the shared services were terminated, and have been sending those emails from those -- the new systems and servers.
Q So that was going to be my next question. Is it that we just did this (snaps fingers) Saturday like that, or did we actually have a mirroring in place for quite some time?
A Yeah, we have for -- been working on this for multiple weeks with the outside IT service provider, and it's been done in phases. And so we've been -- we had a certain small portion of the people start early, they tested it out, and

then we rolled it out more broadly over the last couple of weeks.

Q Who is that third-party IT provider? What was that --

A Siepe.

Q Is that -- that's not proprietary information, is it?

A It's not.

Q Okay. Who is the third-party provider?

A It's Siepe. And they're a outsource --

Q Well, let me -- let me -- let me --

A -- provider --

Q Let me --

A Yeah.

Q Let me direct you. Will you please spell Siepe? I'm not even sure how to spell it. And then tell the Court what Siepe is and what it does.

A Siepe, it's S-I-E-P-E, and I believe it's Italian for hedge, and they are an outsourced IT and IT development provider. And it was actually started by a former member of -- a former employee of Highland about a decade ago, I believe. He spun out and created his own firm. And they do this for a number of asset managers, including for Highland. So they understand our systems. They understand their systems. They're intimately familiar with what we need. They've been servicing our Advisors for years and have created a lot of the connections that we have with outside service

providers.
Q This ain't their first rodeo?
A No. I would think -- it would be -- have been challenging to do it without Siepe, and -- but they were able to execute very quickly because they knew and were already operating with us for years.
Q So can investors, clients, in these funds today get on the Internet and get whatever information they were able to get a week ago, can they still get that today regarding their investments?
A Yes, they can. And I would add one other thing here, important, is the investors, all of their books and records and the data related to our advi... to our funds, the accounting data and the client data, are held at third parties. So we have a third-party transfer agent that has all of the information on client records. That is -- they don't come to us for their client statements. They go to our transfer agent.

In addition, our accounting functions, those data and files are all on their systems.

And so as far as we're talking about data and what they can come to us, they never come to us for their systems and their data. If they want to know what the value is, they can go to Morningstar.com or Yahoo Finance and see daily the pricing of our funds, which are published daily, even

yesterday, published there for them. But their actual client data is held at third-party administrators.

Q The point being, do you, other than maybe a change in the email address, the point being do you think that investors or clients or customers are even aware of the transition away from the Debtor in the last few days?

A Based on business interaction --

MR. MORRIS: Object to the form of the question.

THE COURT: I'm sorry, was there an objection?

MR. MORRIS: There is an objection. To the extent the question is asking for what other people think or believe or perceive, I think that's improper. No foundation.

THE COURT: All right. I sustain.

BY MR. RUKAVINA:

Q Have you received any complaints from investors or customers or clients in the last few days about their ability to do anything with respect to their investments?

A Not that I'm aware of, no.

Q Okay.

THE COURT: All right. Mr. Rukavina, it's about 1:00. How many more minutes do you have?

MR. RUKAVINA: I don't think I have more than ten minutes, Your Honor. Fifteen minutes, tops.

THE COURT: Okay. Well, we need to take a lunch break, so we're just going to break here. It is 1:00 o'clock.

I'm advised that my 1:30 matter is going to take maybe ten minutes. So we will convene -- let me get a clarification.

If we reconvene at 1:45, Mike, do we need to hang up? Do we need to terminate this and --

THE CLERK: Yes. We need to terminate this because she's already gotten one set up at 1:30, the other one.

THE COURT: Okay.

THE CLERK: So they could probably just call in to that one. We just need to get them the information. Let me see if I can contract Traci, see what the best way. Because, like I said, we've already got one for them.

THE COURT: Okay.

THE CLERK: So this one is going to end.

THE COURT: All right. So just stay, I guess, connected. Is that what you're saying?

THE CLERK: Yes, stay connected.

THE COURT: Yes, stay connected. We'll come back at 1:45. And my staff will let you know if by chance we need to terminate this and reconnect. But I think you can just stay connected. Operate under that assumption for now.

All right. So I will see you at 1:45.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

MR. POMERANTZ: Thank you.

(A luncheon recess ensued from 1:01 p.m. to 2:14 p.m.)

THE COURT: Mr. Rukavina was examining Mr. -- I was about to say Dustin -- Mr. Norris. So, are you ready to proceed, Mr. Rukavina? You said you had a few more minutes.

MR. RUKAVINA: Your Honor? Pardon me. Your Honor, I'm ready. Mr. Norris, can you hear me?

THE WITNESS: Yes, I can. Thank you.

THE COURT: All right. Mr. Norris, I'll remind you you are still under oath from your prior swearing in.

All right. You may proceed.

THE WITNESS: Thank you.

DIRECT EXAMINATION, RESUMED

BY MR. RUKAVINA:

Q Mr. Norris, I think before we broke we rounded off a discussion about the previously backup/now-operational plan for IT and electronic data. I'd like to move on now to office space.

A Okay.

Q What is the current status and plan for the Advisors to have office space, both for their current employees and for the Newco employees?

A Yeah. So, from our perspective, we've been in talks with an organization that's willing to sublease a space that is approximately -- close to our current space. And that is the current plan.

In the interim period, all of our employees are working

remotely, and are doing so without any major issues. They're able to -- in this COVID environment, fortunately, there are systems and processes that have already been built out and we've been able to transition to that without any issues. Major issues. Without any major issues.

Q Is there any temporary office space available this week for, you know, meetings or anything that might have to happen in-person?

A Yeah. So, I'm actually sitting in a temporary office space for a meeting. A company we have a relationship with is allowing -- and -- office space here.

Q Okay. What about hardware, like computers, routers, all of that stuff you testified earlier, most of which was the Debtor's property that I'm taking it we left on the Debtor's premises when we vacated Friday? What's the status of --

MR. MORRIS: Your Honor, objection. Again, I don't know what the testimony is and the references to "we". There's no -- there's no evidence in the record that anything was left behind. There's no evidence of any of this.

MR. RUKAVINA: I'll start again, Your Honor.

THE COURT: All right. Sustained.

BY MR. RUKAVINA:

Q Mr. Norris, you've heard Mr. Dondero testify or Mr. Seery testify that the employees of the Advisors that were onsite at Crescent Court vacated. Did you hear that testimony?

A Yes.
Q Is that accurate testimony?
A That is accurate. We all moved out by the end of day on Friday.
Q That's Friday, the 19th of February?
A Correct.
Q Did any employees, to your knowledge, or did you see anyone take any equipment, machinery, et cetera, that was not property of the Advisors?
A Yeah. So, we were informed that we would have access to the systems, as they testified to earlier, until today. So we held onto those. They never told us they needed our laptops. They never told us to leave our stuff, or their stuff. And so we're prepared to provide those and return those. And we are actually operating now independent of those IT resources, being laptops, et cetera, and screens.

So, there were a number of laptops that were assigned to us that we purchased just in the last few months, about 15 of them. A number of screens as well. We took those, and those continue to be used.

For essential personnel, we had, over the last several weeks, purchased additional laptops. As you know, laptops -- you may know laptops are in short supply, and so we ordered them for the essential people that did not have a computer at home, so that they could be operating. Those were outfitted

and ready, many of them picked up last week, some picked up this morning. And those that didn't have a laptop ready, we ensured that they had home access and are able to log in through the cloud. So, all of our systems are hosted by AWS, which is an Amazon system, set up so that we can remote login through a VPN connection. So, our employees are able to access their email and our systems through there.

Q Okay. To the extent any of the Advisors' employees are in possession of computer equipment that belongs to the Debtor, will that be returned promptly?

A Yes. As they request it, it will be, yes.

Q Okay. Have the Advisors offered to purchase for cash money those used laptops and other equipment?

A We have, yes.

Q Did the Debtor accept?

A It was part of our, as we referred to earlier, a slimmed-down proposal over the weekend, which was very minimal, and it included the laptops. And we offered a sum for that, and the OMS system. The sum we offered was $300,000, and we also offered to take one hundred percent of the OMS invoice going forward, and offered the Debtor to continue using that, as we know they -- we believe they may or may not need use for it. But we offered that over the weekend, and they simply responded with, We don't even know why you need this. And the answer was their offer was still on the table, with no access

to Jim, and the whole agreement.

Q So, the Debtor wouldn't negotiate on an *a la carte* purchase?

A No. We offered, actually, last Thursday as well, once we had received the -- kind of the -- Wednesday or Thursday, I can't remember the exact date, after the court filing had been made, for a small, very slimmed-down, which was primarily the OMS and certain data items, which they came back with some counters which weren't workable. And then again, throughout the weekend, I worked all day Saturday. They said they would be willing to consider a slim-down, but send them an agreement, and -- something that Jim Dondero had explicitly agreed to. And we spent all day, discussed with Jim, and sent them to them Sunday morning, to which they -- they did not agree to.

Q Okay. Did they counter, or did they just say no?

A I think that the -- the counter was the offer from Friday, and I can't remember which one it was. But there was a counter, but it was not what Jim had authorized.

Q Okay. Let's move onto the third-party software that we discussed before, Bloomberg, OMS, or Oracle. What is the current status of that vis-à-vis our transition plan?

A Yeah. So, from a trading perspective, trading has been done outside of OMS in the past, right? And if you look at -- it's not as easy. There's also -- so, we have a manual

process in place that we're able to, and that we've tested, that we're able to perform from a trading perspective, where our traders interface directly with the brokers, where they're able to manually input the trade. They're able to be communicated to our custodians and our accountants, and then that is able to be settled manually.

So, that's not ideal. We would like to have an order management system. That said, I know there's discussions with the Debtor, more employees of DSI, about getting copies of their OMS for the data that is ours within the OMS, or allowing us to get that data in order to actually enter into an agreement separately with Bloomberg, which we've been discussing with Bloomberg. And Bloomberg is willing, with their approval, to get that copy and set it up without any setup fees for us, and we would have a new instance of that OMS.

Separately, there are some other free off-the-shelf OMS solutions that our outside service providers have said they can quickly implement. And so it's just determining based on, really, the events today, and the discussions going on on the OMS, what our path forward is. But we have a plan, which we're executing on, to execute trades.

As the Debtor said, they are still providing access to our -- their systems through the end of the case today. And I think, as Mr. Seery said, there's -- they still see trades

going through the system. That's at their goodwill, and I think that's great.

But the OMS is an area of continued focus. Again, we have a plan to go forward or without it, but ideally we would have a smooth transition there.

Q So, if the OMS purchase -- the OMS system can't be purchased from the Debtor, you mentioned a potential agreement with Bloomberg where a new OMS system would be purchased or built? Or explain more what you mean by that.

A Yeah. So, Bloomberg has -- and this is their software, the order management system through Bloomberg -- but it has been highly customized over many years and has our historical data in there, our rules, our Advisors' rules set up that we use for trading. And so it would take several months for us to go in and code exactly how we would like it. However, my understanding is there's a backup where Bloomberg, with the authorization from the Debtor, could transfer the underlying data and setup.

Or alternatively, like I said, we offered over the weekend to pay them a monetary sum to take over the Bloomberg contract, and not just the OMS, but others that I think it was approximately $450,000 a year in ongoing costs we would take one hundred percent of and still provide them access.

Q Access for a fee or access for free?

A Free. Free of charge.

Q Okay. So just so that the judge knows, are we able to execute trades today?
A Yes.
Q Will we be able to execute trades tomorrow?
A Yes.
Q Will we be able to execute trades into the future until we either purchase or develop an OMS electronic system?
A Yes.
Q And in the meantime, it's being done manually, I think you said?
A Yep, manually.
Q And do you have confidence that the manual system is going to be safe and accurate?
A I do. There's -- there is multiple people involved. They've actually run tests -- not test trades, but actual trades, over the last couple of weeks through this system. And our trader has been trading for over two decades, and this is a system he used years ago before we put in place the OMS. There is some --
Q Stop, stop, stop, stop, stop. What system did he use years ago? I want you to be specific.
A This manual system --
Q Okay.
A -- that we're using today. We call it manual. It's a direct with -- with a process that we used previously.

Q Okay. Thank you. I just wanted that clarification.

Do we have -- the Advisors, that is -- do the Advisors have insurance in place for whatever it's called in your business, but for basically messing up a trade? Whether it's professional negligence or O&E or whatever it is. E&O.

A Yes. Our funds have insurance that is through ICI, which is a -- they do this specifically for investment companies. So, we have a -- I think it's an errors and omissions insurance that covers, for example, if there was a NAV error. A NAV error is if a fund made a mistake. In addition, we have NAV error correction policies, where, if it's the Advisors' fault, then the Advisor would have to kick in. But the Advisor has insurance as well, as well, to cover things of that nature.

Q What's the policy limit?

A I believe it's $5 million. I'm not certain, but I believe it's $5 million.

Q Okay. So, over the course of the last several questions, I've gone through kind of various processes and services that the Debtor used to provide. Have I missed anything big-ticket that you feel is of importance?

A As far as essential items, no. There are some smaller items like HR, which is recruiting and hiring, those types of smaller things. Cash management, communicating with custodians, where those are smaller, minor items, but aren't

-- we're able to cover internally but you didn't mention in particular. But those are -- those are the big items.

Q And do you have confidence or a lack of confidence that your backup plan, now the operating plan, is going to succeed?

A I do. It's not the path that we all wanted to go down, right, as we wanted to have a transition. We wanted to have all these systems and software, as evidenced by trying again to have the Bloomberg OMS through the weekend. It's not going to be perfect, but I feel like we have everything in place to do the job that we're required to do.

And we've tried to put in place, you know, controls to mitigate risks wherever possible, and so I feel confident in the plan. I've spent weeks and weeks losing sleep, coordinating, you know, stressing over these items as a backup plan, in addition to trying to negotiate an agreement. I've had a team of senior people across our firm who are from each area of our firm. I have spoken with Debtor employees to consider what additional risks do we need to consider. And so I think it's been very well-thought-out. And I mentioned the last several weeks, that was when, again, when it became an earnest necessity to ensure we had something.

Prior to that, you know, in December and November, we received a list of all agreements. We reviewed a list of all of our agreements, all the Debtor's agreements. And so we were thoughtful already then what we needed. And so as we had

to then execute quickly, we knew exactly what was necessary and what the Debtor was providing us. And so, as well, with this transition agreement, there's about a hundred or so services in there, and discussing what were essential and what were not, what we could enter into by ourselves and what we couldn't. And almost every one of them we could have entered into ourselves. We would have loved to -- and I think we would have had a cost savings, and it would have been a benefit to them -- to reach this broad agreement, but for the one remaining issue that neither Jim would approve.

So, we tried. We went through the, as I said earlier, a thousand line items. We negotiated, I believe, in good faith all along the way. Whenever -- an ultimatum was given to us on Tuesday. I continued pushing all the way through Friday, all the way through the weekend, and this is what I wanted. But along the way, we were preparing in every way for the backup, because I have '40 Act registered mutual funds, I have a board who's demanded it, and we were trying in every way to be able to continue these services in the event that HCMLP would no longer provide them.

Q I think we've established that the Debtor will be terminating the employees, some employees as of February the 28th. Do you expect to hire those employees through Newco come March 1?

A Yeah. So, to make an adjustment there, there are about

eight to ten employees that are investment professionals that we would need to hire directly at our Advisor. Earlier on in the process, there was a question of whether we hire all employees directly, whether Newco hires them, whether Newco is owned by Jim or whether it's an independent business. The current plan, which has been the last couple of months, is that Newco would be independent, they'd be run by an independent management team. We would -- we would be -- provide -- providing them or entering into a shared services agreement.

And so our full understanding and expectation is that those employees for Newco will be hired or anticipated to be hired after they're terminated on the 28th. All of that, I know, is in negotiations, but I believe that is what the Debtor is willing to do, and that those eight or ten employees will be hired by us once they're terminated.

Q So, approximately how many employees, through Newco or directly, do you expect to hire on or about March 1?

A I think there's approximately fifty or so. I know that the Debtor is considering adding, I believe, somewhere around five to ten employees, or taking those. I think we have -- we have not heard or been told. We've been asked -- we've asked several times. They haven't told us who those employees are. But I think we have a pretty good idea.

But at this point, we think that the majority of the

people providing services to us in the back office and middle office, again, because they'll want -- I believe they'll want or are going to be handful of front-office people that help with private equity and winding down those assets. But the bulk, if not all, of the back-office personnel will transfer over to Newco, with a handful of the investment professionals to us.

Q Do you have any concern or is there anything outstanding that would give you concern that that will not happen on or about March 1?

A I sure hope it does, but one thing that may cause me -- maybe the only thing that may cause me concern is they have twice moved back or maybe three times moved back the termination dates. Now clearly know that our plan is to involve Newco and all those employees to continue providing services.

In the event that happens, we're prepared to continue. The items that we're covering in the interim period are the essential items. There's a number of services that -- that Newco would provide that are not essential for the operations of our funds. They include things like tax services for our advisor or the books and records of our advisor, like the HR recruiting services. You know, those could wait, or we could contract them elsewhere.

And so -- but I do hope -- and our -- we don't anticipate

any disruption here. I know that they've said that Newco can hire whoever they want. I think that that's going to be smooth and orderly.

Q Well, so let me ask, let me ask -- I'm down to two or three more questions, but let me ask a worst-case scenario question. Come tomorrow or come Friday, you realize that you can't do OMS manually; for some reason, the Debtor doesn't release its employees; all of your planning turns out to have been inadequate, and essential functions are not able to get done: Are there third-party providers that could immediately step in and provide basically every service that the Debtor is currently providing to the Advisors in such an event?

A There are. I think the trading -- I think we have a good plan. But to your point, your promise, if we couldn't pull it off or there were issues, you can outsource trading. You can outsource that. It's not a turn-on-the-switch, but we do have and have had discussions with service providers there.

In the end, if Newco didn't work out, there are other service providers, which I know that people in our team and the Debtor have talked to, to provide outsourced accounting oversight. There are -- there's multiple options. We just have not --

Q So is it fair to say, is it fair to say that you have currently a Plan B to your Plan B?

A Yeah, well, there is, yes, but I feel very good about our

current Plan B that we've implemented, to the extent I don't think we're going to need that. But if there is a lack of cooperation for some reason, we do have other options to outsource those services.

Q Okay. My final question --

A Again, I don't anticipate -- I don't -- I don't -- I don't think that's going to be the case, but --

Q My final question, Mr. Norris. This backup plan and now the operational plan that you have, was it in any way motivated, sped up, anything by the filing of this lawsuit?

A No. I think one thing the finalization -- the filing of the lawsuit did was make us realize that the backup plan we had been working on was absolutely needed. I felt very good about where we were at that point, and we were prepared to move forward.

It did change that I, over the next six days, me and several other of the critical employees that have been working on the backup plan would be involved in preparing for this exact situation. Instead of continuing those discussions, I'd rather be boots on the ground, dealing with my employees, the senior management team and everyone else. Luckily, you know, after my deposition, before my deposition yesterday, I was involved in how is everything going. We had checkpoints and touchpoints. We had calls in the afternoon.

Fortunately, there were no significant issues, but there

were a lot of minor issues. There were things that needed to be approved or people had questions. But that, I think, is the only thing that changed here. It's -- we had to -- now we knew that, okay, they're going to pull the plug because of this.

At that point, I was not expecting that really to happen at that point, that that would be the issue.

Q Well, Mr. Norris, --

A But luckily, we had planned for it.

Q Mr. Norris, if an allegation is made that it was the filing of this lawsuit that somehow spurred us into taking our responsibilities seriously, would you agree with any such allegation?

A No. I would disagree.

Q Thank you.

MR. RUKAVINA: I'll pass the witness.

THE COURT: All right. Mr. Morris?

THE WITNESS: I can't hear you. I think you might be on mute, Mr. Morris.

(Pause.)

CROSS-EXAMINATION

BY MR. MORRIS:

Q Got it. Can you hear me now?

A I can, yes.

Q Okay. Super. I have a few questions, sir.

A Yes.
Q You spent a fair amount of time testifying about how poorly the Debtor was performing under the shared services agreements last October and November. Do you remember that?
A I remember I testified. I wouldn't say it was some time, but yes.
Q You specifically mentioned the October and the November time frame, right?
A Correct. I believe so.
Q And you said that during that October and November time frame, there were lots of conflicts of interest that were arising; is that right?
A I don't remember my specific wording, but if it's part of the record, then yes.
Q Uh-huh. And you said that the Advisors weren't getting the same level of services that they thought they were entitled to; isn't that right?
A That's correct.
Q And you thought -- and the Advisors thought long and hard about terminating, about taking the initiative and terminating the shared services agreement, right?
A I don't know if I used the word "long and hard", but yes, we did consider and discuss the termination of the shared services agreements.
Q And the reason that you decided in October and November

not to do that is because you knew there was an order in place that prevented a Dondero-related entity from terminating an agreement. Isn't that right?

A That's -- that's one of the reasons, yes.

Q That's the only reason you identified before; isn't that right?

A I believe so.

Q And that --

A That was a determining -- that was a make-or-break point, yes.

Q And it was a -- and that was false testimony; isn't that right?

A No.

Q Well, just a month later, in December, the Advisors sent a letter to the Debtor threatening to terminate the CLO management agreement; isn't that right?

MR. RUKAVINA: Your Honor, I'll object to that, it's not in the evidence, and I'll object on the basis of the best evidence rule.

THE COURT: Response?

MR. MORRIS: You can answer, sir.

THE COURT: Response?

MR. RUKAVINA: Your Honor, I didn't hear a response.

MR. MORRIS: The witness is the executive vice president of the Advisors. The Advisors were the subject of a

preliminary injunction proceeding. During that proceeding, against these very same Defendants, this letter was admitted into evidence where they -- where the Advisors did exactly what Mr. Norris said they would never do because they didn't think they had the authority to do that. Mr. Norris is the best evidence right now, Your Honor.

THE COURT: Okay. I overrule the objection.

MR. MORRIS: Your Honor, that's not --

THE COURT: I overrule the objection. I remember the evidence from the December hearing. So he can answer.

THE WITNESS: Yeah, so can you repeat the question, just so I make sure I answer appropriately?

BY MR. MORRIS:

Q Sure. In December, the funds and the Advisors for which you serve as the executive vice president, on, I think, December 23rd, sent a letter to the Debtor threatening to terminate, right? Threatening to use what authority they thought they had to go in and terminate the CLO management agreements. Isn't that right?

A I was not involved in the drafting of the letter, but my understanding is there was no threat. It was -- and I believe the letter even said, subject to court approval or stay or process. I would love for -- if there is a letter, if you want to bring it up, but I wasn't directly involved with the letter.

Q And the Advisors didn't send a letter to the Debtor in October or November saying, We want to terminate the agreement subject to whatever you just said. In fact, you concluded that you couldn't do it because of the injunction, right?

A Correct.

Q Yeah. You've spent an awful lot of time talking about this operational plan that the Advisors have today. It was a much more modest plan during your deposition yesterday; isn't that right?

A I wouldn't --

MR. RUKAVINA: Your Honor, I'll object --

THE COURT: I'm sorry?

MR. RUKAVINA: I object to that characterization.

THE COURT: You object to --

MR. RUKAVINA: Your Honor, I'll --

THE COURT: -- the charac...

MR. RUKAVINA: I'll withdraw that. I'll withdraw that objection, Your Honor.

THE COURT: All right. Go ahead.

THE WITNESS: No, I answered the questions in the manner that you asked them in the deposition. I don't think that you asked for detailed descriptions. In fact, I know you didn't. And so there was a lot more than what I discussed in my deposition yesterday.

BY MR. MORRIS:

Q Okay.
A Nothing -- there's nothing that -- nothing that conflicts with what I said yesterday.
Q James Palmer was hired to provide accounting and audit services yesterday on a contract basis, correct?
A He was hired yesterday, yes. And that was, yes, part of the additional oversight for our accounting function. We're handling a lot of that internally, but Mr. Palmer was experienced with our platform and with our funds, and we thought it was prudent, in the -- if needed, to have somebody on call. And our board actually requested it. And so that's a -- you know, that is someone who we feel very comfortable with providing those services.

MR. MORRIS: I move to strike everything after "Yes," Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:
Q Okay. I'm going to ask you, sir. This is cross-examination. I'm going to ask you leading questions that are intended to elicit a yes or no answer.
A Got it.
Q Your counsel will have the opportunity to redirect if he think it's necessary.

So, let me ask the question again. Mr. Palmer was hired by the Advisors to provide audit and accounting services

yesterday. Isn't that correct?
A No.
Q Yesterday was his first day on the job. Isn't that right?
A He is a contract employee. So we didn't hire him.
Q Okay. You did testify yesterday that yesterday was the first day he was providing services that had been provided by the Debtor. Is that fair?
A Yes.
Q Okay. And Siepe is another entity that the Debtor had a -- that the Advisors had a prior relationship, right?
A Correct.
Q And you don't have an agreement with Newco today, do you?
A Not yet.
Q So, Newco is not providing any services today, right?
A No.
Q And you don't have office space today, right?
A Not yet.
Q Okay. So, when the sun rose on Saturday morning, to use the same analogy, I guess, you'd been kicked out of the house and you had no place to go. Is that fair?
A No.
Q Everybody's working remotely right now, right?
A Yes.
Q And the Advisors have no lease for any office space on a long-term basis, right?

A No, but we've toured space and have a -- we are ready to sign a sublease as soon as we're ready.
Q Okay. But you didn't have that as of Friday; is that fair?
A No.
Q Okay. And you -- and you're doing trading now on --
A Actually, can I make a -- can I make a correction? I -- you said you didn't have that. I said we had done a tour, and I had done a tour before Friday, and that we had a lot lined up, and I had them asking us, Are you ready to execute, will you be here Monday?
So, that was there. Again, realizing we were going to be, hopefully, the plan was to reach a full agreement with you, but having that backup plan in place, not to sign a lease and spend the money unless we knew we weren't going to be able to be in the office space. So that's why.
Q All right. So let me ask the question again. As of Friday, the Advisors had no place to go at the end of the extended shared services period, correct?
A I disagree with that.
Q Okay. They don't have an -- does the Advisors have an address today?
A We have an address, yes.
Q Yeah? Where is the address?
A So, we -- we have been -- we have a -- so we have a -- our

NexPoint Securities has an office on McKinney Avenue in Dallas, which is where we -- we have an ability to send our mail to and to have an office, which is where we intend to actually be subleasing.

Q Okay. But you don't have a sublease today, and that address isn't the address of the Advisors, right?

A It is all but in place, waiting to not spend the significant expenditure in the event that we could, which our plan was to hope to reach an agreement.

Q Okay. And you're doing trades manually? Do I have that right?

A It is -- we call it a manual process, but it involves like -- there's a certain -- it doesn't involve the OMS system. That's right.

Q And when your operational plan is fully in place, would you expect it to have an OMS system?

A Yes.

Q But your operational plan today doesn't have one of the pieces that you expect it to have in the future; is that right?

A It has -- it has a usable option, but no. We're close to entering into an OMS, and that's not the long term. Yeah. We aren't going to be doing a manual -- our manual process forever.

Q Yeah. But you're very, very, very happy with your

operational plan, right? You're very proud of it?
A Given the constraints we were working under, I feel it's -- it is a plan that works. Would I think that the alternative with what we were negotiating would be better? Probably. Would it be better to have access to our systems, to our computers, without having to turn them back into you? Yes, absolutely.

So I don't remember the word you just used, but I think very happy or very pleased, I wouldn't say that. I would say it is functional, it helps us do our duty and our job, and we're going to get back to that ideal. And the reason I negotiated all the way through the week and all the way through the weeks and all the way through the weekend is because there was a better alternative, which was a negotiated settlement.
Q All right. We'll talk about that in a moment. But notwithstanding the fact that there may have been a better alternative, as of today the Advisors have adopted and implemented an operating plan for the provision of all of the same back-office and middle-office services that the Debtor previously provided, correct?
A To cover -- and I would say they do, yes.
Q Okay.
A Yes.
Q And as of today, the Advisors are fully able to perform

under their shared -- under their advisory agreements with the funds; is that correct?
A Yes.
Q There is nothing the Debtor has done that has prevented the Advisors from fully performing under their advisory committee -- advisory agreements with the funds, correct?
A It took great effort over the last several months, but no, not that I'm aware of.
Q Okay. Other than access to the data, there are no services that the Advisors need from the Debtor. Is that correct?
A No, but the peaceful transition of the data is important, right? We have, as you mentioned, we have most of the data we need, but the peaceful transition of the data and the files in the systems -- not the systems, but the data backups of the systems -- will be critical, yes.
Q Okay. But other than data, there are no services that the Debtor needs to provide to the Advisors as of today, correct?
A Not that I know of.
Q And having been as involved in the process as you've been, you would know if there was a service that the Debtor had to provide to the Advisors today; isn't that right?
A Yes.
Q Okay. And you don't know of any service that the Debtor needs to provide to the Advisors as of today, right?

A I don't. We mentioned data. I think one of those -- well, I'll leave it as yes.
Q Okay.
A Yeah.
Q Did you have this plan in place, this operational plan, was that -- were all of the pieces in place last Tuesday night? No. Withdrawn.
Were all of those pieces in place as of January 31st, 2021?
A No.
Q So is it fair to say that the Debtor didn't -- that the Advisors did not have an operational plan that would permit them to obtain all of the same services that the Debtor had been providing under the shared services agreement as of October -- as of January 31st?
A No.
Q They did have a plan in place at that time to get those services? Is that what you're saying?
A Yes. There was a plan, a Plan B. It wasn't nearly what Plan B is today because we've -- we've had multiple additional weeks to ensure that everything's in place, but we had Plan B. But at the time -- maybe I'll leave it there. But at the time, there was good faith negotiations up to that point, where Plan A looked like it was going to happen. And so that was the full expectation with a backup plan which was not as

intricate.
Q Did the Advisors ever inform the Debtor at any time during the negotiations that they had an operational plan pursuant to which it could obtain the same middle- and back-office services that the Debtor had been providing?
A If you include your Debtor employees, then yes.
Q Did you ever use it as a point of negotiation? Did you ever try to tell the Debtor, you know, if you guys don't agree to our terms, we're going to walk away, because we've got this fully-operational plan to get the same services that you guys are providing? You're not the only game in town?
A I never used that kind of exact approach, no.
Q Did you use any approach where you relied on the operational plan as leverage to try to drive a better deal with the Debtor?
A No. I don't think so.
Q No? Okay. And fast-forward to that Tuesday night when the Debtor said take the plan without Mr. Dondero or we're going to sue you. You remember that, right?
A Yes.
Q And every aspect of the agreement was in place except for Mr. Dondero, right?
A Except for his access to the office, --
Q And the --
A -- yes.

Q And the Debtor had told you time and time again, every time it appeared in a document, they removed it, and they told you every single time no access for Mr. Dondero, right?
A No.
Q Did you have any reason to believe that that was ever going to change?
A I did. And I said no to your last question, right? I didn't say yes. I said no to your last question, that --
Q And did the Advisors make a decision to reject the Debtor's offer for the sole reason that Mr. Dondero wouldn't be permitted access?
A That was the last point. As mentioned, every other point was agreed to.
Q And why didn't the -- why didn't the Advisors -- did the Advisors -- withdrawn.

Did the Advisors say to the Debtor, we get it, you're not going to let Mr. Dondero in, but that's a line in the sand for us? But please, there's no need for a lawsuit. We've got a wonderful operating plan ready to go. You're asking the Court to force us to adopt and implement the plan, we have one right here, so let's not litigate. Let's just walk away and let bygones be bygones. Did you ever offer to get rid of the lawsuit by showing the Debtor your plan?
A We would have loved to have gotten rid of the lawsuit, but I didn't see it until it was filed. When the ultimatum was

given, we had rolling blackouts. My home didn't have electricity rolling from 2:00 a.m. on Monday until Thursday. And so by the time there was -- and everybody else, inclusive of our attorney, Mr. Rukavina. And so to say that I -- I received it Thursday or Wednesday morning, when one of your employees forwarded it to us. I hadn't seen drafts. Maybe our counsel had. But we didn't even have a chance to say, oh, let us -- let us pull this because we read what your report was. The Advisors didn't even have a chance to respond. At least that is my understanding. I never had a chance to respond. I never saw it. Maybe counsel did.

Q Well, you saw the lawsuit eventually, didn't you?

A I did.

Q Did you ever -- did the Advisors -- after you saw the lawsuit, did the Advisors ever call up the Debtor and say, hey, look, let's not litigate? We have exactly what you want. We've got this fully-operational plan that provides us with everything we need. You don't need to do anything further. Did you ever say that to the Debtor?

A No, because the back -- the -- we still wanted to reach an agreement. That was the goal. And it was a surprise for us to have a shock, we're going to pull this or we're going to sue you on Tuesday evening. And so, no, we still -- I -- and that's why I negotiated and continued to work all the way through the end of the week and through the weekend on

something, because I still felt like that was the better plan for everybody.

I don't know why we had to be sued, I don't know why it had to be urgent, because at that point we had been working for weeks and months. And the weeks -- really good. And the only difference was Jim Dondero's access. And it was Tuesday. And they didn't even ask us, you know.

Anyway, so that was -- I just -- I just disagree with your characterization of the process.

MR. MORRIS: I move to strike, Your Honor. It really is a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q Did the Advisors, after the commencement of the lawsuit, did the Advisors ever tell the Debtor that there was no need for litigation because the Advisors had a fully-operational plan that they had adopted and were prepared to implement, which is exactly what the Debtor was seeking from the Court?

A I don't know.

Q You're not aware of that, right?

A I'm not.

Q You don't -- you never thought that maybe we could avoid this whole thing by just sharing with the Debtor this operational plan that you've described in great detail, right?

A Well, on Friday, I know you put in, in a response to our

board and Advisors, that you were made aware that we had a plan that felt good, yet there was no consideration or discussion on removing the lawsuit.

So, I'll leave that to what counsel happened, but I would have loved to not be involved. I'm not a legal expert. There were many attorneys involved. I wish that if that were an option, it would have been raised. But here we are today.

Q Sir, not only did the Advisors not tell the Debtor that they had an operational plan that could avoid the lawsuit, instead, the Advisors made proposals on Friday, one of which did not even include having access to the office by Mr. Dondero. Isn't that right?

MR. RUKAVINA: Your Honor, I object to that question as it mischaracterizes the evidence. The question began with that the Advisors never told the Debtor that they had a backup plan. I think the witness --

MR. MORRIS: Your Honor, --

THE COURT: Okay. Sustained. Rephrase.

MR. MORRIS: Yeah. No problem.

BY MR. MORRIS:

Q So, so to the best of your knowledge, the Advisors never told the Debtor that they thought litigation could be avoided because they had an operational plan. Is that right?

A That's my -- that -- yeah, that's right.

Q Okay. And instead, on Friday, the Advisors continued to

try to pursue an agreement with the Debtor. Is that right?
A I don't know about the "instead." But, yes, we tried to continue reaching an agreement.
Q And are you familiar with the offer that was made by the Advisors to the Debtor on Friday morning?
A I am.
Q Did you authorize the sending of that offer to the Debtor?
A The request, yes. Me and D.C. Sauter were involved with counsel, so we -- we did -- we did.
MR. MORRIS: All right. Can we please put up on the screen Exhibit 19? Can we start at the bottom, please?
BY MR. MORRIS:
Q So, are these the Options A and B that were presented to the Debtor on Friday morning?
A Based on the email, yes.
Q Okay. And Option B contemplated that the Advisors would completely vacate the space by the end of the month, right?
A Correct.
Q And that's an option that you and Mr. Sauter authorized the lawyers to send to the Debtor, correct?
A Yes.
Q Okay. And you had that authority from Mr. Dondero, right? Mr. Dondero gave you the authority to negotiate; is that correct?
A He gave me the authority to negotiate in those final

couple of days. There were certain things he gave me authority to negotiate on. And specifically -- and to things that shouldn't be included on this point, we discussed this beforehand as well. But we had authority to negotiate.

Q And you had authority to make this proposal, right? Option B?

A Ultimately, no.

Q At the time you made it, you thought you had it, right?

A Yes.

Q You weren't acting outside of what you knew to be your scope of authority, were you?

A No.

Q Okay. Did you discuss with Mr. Sauter these two options before they were delivered by your lawyers to the Debtor?

A Yes.

MR. RUKAVINA: Your Honor? Your Honor? Hold on.

Your Honor, Mr. Sauter is an attorney. He's in-house counsel. So I think that to the extent that they're discussing business, that's not privileged. To the extent they're discussing legal strategy, that is privileged. So I would instruct the witness to be conscious of that --

THE COURT: All right.

MR. RUKAVINA: -- and to not disclose attorney-client privileged communications.

THE COURT: All right.

BY MR. MORRIS:

Q Sir, did you discuss these two proposals with Mr. Sauter before it was delivered by your lawyers to the Debtor?

A Yes.

Q And did Mr. Sauter also agree with the substance of these two offers that were being presented to the Debtor?

MR. RUKAVINA: Mr. Norris, can you answer that question without invading the attorney-client privilege?

MR. MORRIS: I'm just asking about the offers. I'm not asking about any legal advice or anything. I just want to be that clear.

MR. RUKAVINA: That's why I'm asking Mr. Norris. If they discussed business, I don't think we have a problem. But if they discussed legal strategy, I think it's a problem. So I think the witness just has to tell us whether --

THE WITNESS: There --

MR. RUKAVINA: -- they discussed business or legal.

THE WITNESS: There -- there was a -- there was some legal -- legal strategy as well, yeah.

MR. RUKAVINA: Your Honor, I would -- I would ask that that -- I would object to that question on that basis, that it calls for the invasion of the attorney-client privilege.

THE COURT: All right. I sustain.

MR. MORRIS: I'll try -- I'll try and ask the

question again, then.
BY MR. MORRIS:
Q Mr. Norris, did Mr. Sauter agree and authorize the sending of these two proposals by the Advisors' lawyers to the Debtor on Friday morning?
A We both agreed with that approach.
Q Okay. And you both -- is it fair to say that you both believed that you were acting within the scope of authority that Mr. Dondero had given you?
A We thought so, and -- well, I'm sure your questions will lead me to the -- to the ultimate of what happened here, but yes.
Q Yeah. And this proposal didn't permit Mr. Dondero back into the Highland office space; is that right?
A It didn't prevent him? Is that what you said?
Q Didn't permit him. Didn't allow him.
A Option A just above did and Option B did not.
Q Okay. So, you and Mr. Sauter, as the Advisors' designated negotiators, authorized the Advisors' lawyer to present as Option B an option that did not permit Mr. Dondero access to the Debtor's offices, right?
A Yes, but gave us full access to everything else.
Q Okay. It was really --
(Pause.)
THE COURT: Uh-oh.

BY MR. MORRIS:

Q How does Option B -- how does Option B, if you know, --

A Sorry, you froze. You froze there for a minute, I think.

THE COURT: Yes. I think you did.

MR. MORRIS: No, I think I just paused.

THE WITNESS: Oh, you were just thinking? Oh, that was really talented. Wow.

BY MR. MORRIS:

Q No, it's -- it's not that good. Do you know how Option B differs from the term sheet that the Debtor provided on Tuesday night?

A It would not include the access -- it wouldn't include access to the office for anybody. The, as it says there, the Debtor would take a hundred percent of the lease.

Q Okay. So, it was going to be complete walkaway? The Advisors were going to completely walk away at the end of the month, right?

A Correct.

Q And that was -- that was an offer that you believed you were authorized to make to the Debtor, right?

A Yes.

Q Okay.

MR. MORRIS: Can we go two emails up to Mr. Hogewood's? Oh. Yeah. The one at 12:04. Yeah.

BY MR. MORRIS:

Q Were you aware that there came a time early in the afternoon that the Debtor was informed that there may need to be an edit to Option B, so they pulled that back for a bit?
A I wasn't aware, no.
Q No? All right. Do you have any knowledge as to what edit Mr. Hogewood was referring to in his email there?
A I don't.
Q Okay. Were you aware -- did you get a copy of Mr. Hogewood's email? Was it forwarded to you? Do you know -- withdrawn. Let me ask a better question.

Do you know if Mr. Hogewood delivered -- withdrawn.

Did you know on Friday morning that Mr. Hogewood had delivered the two options, the two proposals, that you and Mr. Sauter had authorized?
A Yes.
Q Okay.

MR. MORRIS: Can we go up an email or two, please?

BY MR. MORRIS:
Q And then Mr. Hogewood wrote back and he said that he was authorized to put Option B back on the table, as stated above. Do you see that?
A I do.
Q Do you know who authorized Mr. Hogewood to put Option B back on the table?
A I don't remember. I don't know. I wasn't on the chain.

Q Okay. But it's fair to say at this point in time, midday on Friday, as far as you knew, your lawyer had communicated Option A and Option B to the Debtor, and they were authorized to do that, right?

A Yes.

Q Okay. And did you learn subsequently that there was a phone call between the lawyers for the Advisors and the lawyer for the Debtor during which the Debtor indicated that it was prepared to accept Option B?

A I don't know, no, I don't know about that.

Q You were never told that?

A No. Not that there was a phone call.

Q Uh-huh. Did you learn at any point on Friday that the Debtor had accepted Option B, the Option B that you and Mr. Sauter had authorized the Advisors' lawyers to make?

A Yes.

Q Okay. So, there did come a time when you knew that the Debtor had accepted Option B, right?

A Yes.

Q And are you aware that, after accepting Option B, the lawyers discussed turning the agreement into a settlement order to resolve the litigation?

A No. I wasn't aware of that.

Q Are you aware that the lawyers were discussing plans for the transfer of -- by wire of cash that would be due under the

agreement?
A I was not.
Q Okay. After the Debtor accepted Option B, the Advisors withdrew it, correct?
A I don't know if we with... we did withdraw it, yes.
Q And after it was presented, Mr. Dondero said that he hadn't personally approved it, correct?
A In the terms of which -- the actual offer, yes, that's correct.
Q So, Mr. Dondero, having given you and Mr. Sauter the authority to negotiate, learned that the Debtor had agreed to your proposal pursuant to which he wouldn't be allowed access to office space and he made the decision to withdraw the offer, correct?
A I wouldn't agree with exactly the phrasing, no.
Q Sir, Mr. Dondero is the person who decided that he had not approved of Option B, and that's why it was retracted, correct?
A That's right.
Q So, on Tuesday night, the Advisors had a fully-negotiated agreement for the provision -- for the transition of all of the back-office and middle-office services, but for access to Mr. Dondero, correct?
A Correct.
Q And the only reason that didn't get signed is because of

that issue, right?
A That's my understanding, yes.
Q And the Debtor continued to negotiate with the Advisors, even after filing the lawsuit, correct?
A Yes.
Q The Debtor was never told that the Advisors had a fully-operational plan pursuant to which it had an alternative to obtain the same services, correct?
A That's incorrect.
Q After negotiations broke down, is that the moment that a reference was made to alternative plans?
A No.
Q Sir, on Friday, you personally reached an agreement with the Debtor on Plan B, right? You authorized the making of an offer that the Debtor accepted, correct?
MR. RUKAVINA: Your Honor, I'm going to object at this time based on a legal conclusion. The witness is not a lawyer and he's not qualified to opine on whether an agreement, which to me suggests is something binding and enforceable, was ever reached.
THE COURT: Response?
MR. MORRIS: Your Honor, I'm not looking to enforce any agreement, so let me try and restate and --
THE COURT: All right. Sustained.
MR. MORRIS: -- address Mr. Rukavina's --

THE COURT: He'll rephrase.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q Even as late as Friday, after starting the lawsuit, you had made an offer. You had authorized the making of an offer that the Debtor had agreed to again, correct?

A I had auth... I had said we should -- yes, I had authorized the offer and then your fax saying on the acceptance. I wasn't involved in the back-and-forth communication among the attorneys.

Q But you knew it was accepted, subject, let's say, subject to the execution of definitive documentation. How's that?

A I was told that they were willing to take the offer. And so, yes. And --

Q And sometime later that day, it got pulled because of Mr. Dondero, correct?

A Correct.

Q And even on Saturday, the Advisors made proposals on an *a la carte* basis for the provision of services, correct?

A Yes. And we have made very similar *a la carte* provisions on Thursday and Wednesday, which were also rejected by the Debtor.

Q And -- okay. So it wouldn't have been the full kind of deal that was contemplated in the term sheet; it would have been a selection of very specific services. Do I have that

right?

A That's right. On Wednesday, it was Oracle and Bloomberg, which was authorized by Mr. Dondero. We were to offering to continue with our offer to take over the lease and all the other terms, or a slim-down, which would include no disputed amounts or payments, which at that time I think we called Plan B or Option B. And that was -- I believe that was Thursday. Or Wednesday night. So, yes, those continued. And then we had a similar, very similar proposal again on Sunday, with the same -- very similar services to what we asked for on Wednesday night or Thursday. And those were rejected both times.

Q And is it fair to say that the services that the Debtor was seeking -- withdrawn.

Is it fair to say that the services of the Advisors were seeking from the Debtor on Thursday, Friday, and Saturday were services that the Advisors had not yet engaged anybody else to provide?

A The two -- we already talked about Bloomberg and where our status is there. And on Oracle, it would be a nice to have instead of transitioning, and that is more for the Advisors' books and records and would be nice to have.

Q So, --

A Yes.

Q Okay. You have a Plan B for the new operational plan.

Did I hear that part right?
A As I mentioned -- oh, I said our operating plan was a hypothetical from -- from Mr. Rukavina, that in these other events fall through, are there other people that you could hire to do these services? And I said yes.
Q Okay. So if any part of the operational plan fails, the Advisors would look to third parties to provide, you know, whatever service they wouldn't obtain and they wouldn't look to the Debtor to provide any services, correct?
A That's correct.
Q Is it fair to say that, other than access to the data, the Advisors will never seek any services of any kind from the Debtor going forward?
A As we sit here today, I believe your employees are set to have three more operating business days and then will be terminated, those -- the employees that services our accounts. So, with the expectation that Newco will be formed, I have no expectation we'll be asking for any significant services, other than data, transfer of emails, et cetera.
Q Well, that's a pretty qualified answer. What do you mean by no significant services?
A Most of them -- well, the data, emails, et cetera, are all minor items, and I think they're -- you say data, but I think there's -- there's a handful of things that probably fall under that data and books and records that are what I'm

talking about, yes.
Q You know, one of the things that the Debtor is very concerned about here is having no future obligation. The Debtor -- do you understand that the Debtor believes that it has terminated the shared services agreements as of Friday?
A I do, yes.
Q Do you understand that, other than the data that it holds, the Debtor wants the comfort of knowing that it has no future obligations to the Advisors of any kind, other than to provide access to the data?
A Yeah, that's fair. Yes, I understand that.
Q As the executive vice president of the Defendants, as the executive vice president of the Advisors, can you, under oath, give the Debtor comfort that the Advisors will not look to the Debtor for any services of any kind after today? Other than the access to the data?
A Data and books and records, yes.
Q Okay. So access to data and books and records is the only thing that the Advisors will look to the Debtor for at any time in the future after today; is that fair?
A I would say it's not fair, because to say there's not other significant -- insignificant or minor items -- as Mr. Dondero testified, there's usually a smooth transition. I don't anticipate there will be significant items that would take a lot of your time or we need to invade you, but I would

hope there would be a fair and orderly transition. And I can't predict the minor items, but I don't think -- I can't envision anything significant.

Q Do you believe, as the executive vice president of the Advisors, that the Debtor has an obligation to perform any services for the Advisors after today, other than giving access to the data and the books and records?

A No.

Q What happens if Newco isn't formed? Is there any scenario that you're aware of where the Advisors would look to the Debtor for any services in the event that Newco is not formed?

A No. Not that I'm aware of. I don't know. I don't think so.

Q I think you mentioned earlier about the transfer of data. What does the Debtor need to do, from your perspective, in order to transfer the data and the books and records?

A We need the Debtor to authorize its IT director to transfer the data. We stand by ready. I sent an email to your IT team asking for him to get the required approvals on Friday morning, and our -- CFA, the outsource team, stands by ready, at our cost, to transfer any remaining data.

So we just need you and Mr. Seery and -- to authorize the free transfer of data. Not necessarily you, but Mr. Seery, and then your IT team and your employees can feel comfort. Because over the last few weeks they have not provided any

data or any assistance providing data because they're concerned. They're concerned about their liability, they're concerned about things that the Debtor has told them. And so I just -- if you and Mr. Seery can tell them any data that is -- I mean, yeah, we're prepared to send a request of what we need, but they need Mr. Seery, because he has been holding that over them.

Q And what data are you referring to specifically?

A Yeah. We're talking about historical emails, emails that are held in what's called the vault. It is files in our systems. We've been able to copy, we think, most of what we have, but there is a number of records. We would like a copy of the database that backs up home (phonetic). We'd like a copy of the Bloomberg OMS, which I mentioned before. The data that backs up our data. Just a backup copy.

And there's a number of other items which we'll request, but these are all very simple items that don't take very long. I would imagine, with proper approval, and almost no work from your end, maybe your one IT guy, these can be transferred in a very efficient, effective, quick manner, most of it this week or within a couple days.

Q Okay.

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

THE COURT: All right. Redirect?

THE WITNESS: Thank you, Mr. Morris.

MR. MORRIS: Thank you.

REDIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Norris, you mentioned that Debtor employees knew of our backup plan. Give some more specificity, meaning how and why you think they knew that and who did you talk to about that and when.

A. Yeah. So, the individuals authorized to discuss with me were David Klos, Frank Waterhouse, Brian Collins, and J.P. Two of those individuals are members of the -- well, one's still an officer, two or both were officers of our funds. And so in our discussions as well throughout, I mentioned, hey, we're working on backup plans. There were aspects of those they couldn't be involved in because they were negotiating for the other side. But they were aware that we were working on things.

In addition, Mr. Seery represented they knew we were taking data off or copying data off the system, leaving it all on their system, and that we were backing up emails and that we were working on a backup plan.

So I don't think it was a surprise to anybody. Their IT team knew and was very aware. We purchased new domains. We requested domains. We even had requested if they would forward domains to ours, which I think the answer was no. If they would forward emails.

And so I don't think there was any surprise that there was backup planning going on. And so there were discussions. It wasn't -- we didn't discuss the details. We didn't discuss the details because we were entered into a negotiation with millions of dollars at stake, and if I show or we discuss all of our alternative plans, then there is less ability to negotiate.

Q Okay.

MR. RUKAVINA: Mr. Vasek, if you will please pull up that letter that I sent you.

BY MR. RUKAVINA:

Q Okay. If we have to scroll down, Mr. Norris, we can, but are you familiar with this letter from the Debtor's attorneys to the boards and us the evening of February 19th, Friday?

A I am.

Q Okay. Is this the letter that you referenced when Mr. Morris was asking you about why we didn't just tell the Debtor that we had a backup plan and therefore we could dismiss this litigation?

A I believe so, yes.

Q Okay.

THE COURT: Is this an exhibit?

MR. RUKAVINA: No, Your Honor. I'm about to move for its admission. Your Honor, I'd ask that this be admitted as my Exhibit O.

THE COURT: All right. Any objections?

MR. MORRIS: Sorry. No, Your Honor.

THE COURT: All right. It'll be admitted.

(Advisors' Exhibit O is received into evidence.)

MR. RUKAVINA: And Your Honor, we will --

THE COURT: You'll have to supplement the docket with it.

MR. RUKAVINA: Thank you. We will.

THE COURT: Okay.

MR. RUKAVINA: Mr. Vasek, if you'll please scroll down to Page 3 of 4, the paragraph that begins, "During the course of this conversation." Actually, the next paragraph that says, "We understand."

BY MR. RUKAVINA:

Q Do you see that there, Mr. Norris?

A Yes.

Q Okay.

MR. RUKAVINA: What is that there, Mr. Vasek? I'm seeing a square. Okay.

BY MR. RUKAVINA:

Q So that paragraph begins, "We understand, based on this conversation, that HCMFA and NPA have made arrangements to obtain the resources they need to provide the services on a continuous and seamless basis to their clients, including the registered investment companies to which they serve as

investment advisor. We plan to proceed with our request for a mandatory injunction at the February 23rd, '21 hearing." And then it keeps going.

Did I read that accurately?

MR. MORRIS: Can you please --

THE WITNESS: Yes.

MR. MORRIS: -- keep going, because I think it's important?

MR. RUKAVINA: Well, you get to ask him next.

BY MR. RUKAVINA:

Q Did I read that accurately, Mr. Norris?

A Yes.

Q Okay. So tell me, then --

MR. RUKAVINA: Well, strike that. I'll move on.

You can leave that up, Mr. Vasek, if Mr. Morris needs to use it.

BY MR. RUKAVINA:

Q Now, do you recall you were asked about that Option A and Option B from last Friday, and Option B had been withdrawn? Do you recall that?

A Yes.

Q And do you recall that, under that Option B that was withdrawn, that the Debtor accepted that Mr. Dondero wouldn't be on the premises, right?

A Yes.

Q Okay. But would NexPoint have been on the -- on the premises?
A No. No.
Q So, under both Option A and Option B, would Mr. Dondero have been with his employees?
A Yes.
Q Okay.

MR. RUKAVINA: I'll pass the witness. Thank you.

THE COURT: Recross?

MR. MORRIS: Can we put that exhibit back up on the screen, please?

RECROSS-EXAMINATION

BY MR. MORRIS:
Q First of all, sir, you have no idea what was discussed in the conversation that's referenced in the first sentence, correct?
A I don't. I was not a part of it.
Q Okay. Do you know if the Debtor in this instance was trying to hold the Advisors' feet to the fire?
A Again, I was not part of the conversation.
Q So you don't know the motivation for sending this letter; is that fair?
A I don't.
Q Can you read out loud the letter -- the --

MR. MORRIS: I can't see it, actually. Can you just

push it down a little bit, because I've got the little box in the upper right corner? No, the other way. I'm sorry. Yeah. Perfect.

BY MR. MORRIS:

Q Do you see -- can you read out loud the sentence that begins, "We plan to proceed"?

A (reading) "We plan to proceed with our request for a mandatory injunction at the February 23rd, 2021 hearing and hope that we can submit to the Bankruptcy Court a consensual order incorporating HCMFA's and NPA's acknowledgment of HCMLP's right to terminate services under the shared services agreement as provided for herein and their commitment to provide services to their clients on a go-forward basis."

Q So in fact, as of -- do you know when this -- do you know when on Friday this letter was sent?

A I don't know the time.

Q Okay. It's -- it's -- based on what you just saw, the reference to the conversation, is it fair to say that this occurred after the Debtor was informed that the Advisors were withdrawing Option B?

A I believe so.

Q Right. And here, in fact, the Debtor is asking the Advisors to join it in providing a consensual order that would resolve this motion, right?

A I don't know. They're -- it said, "hope that we can

submit a consensual order incorporating HCMFA's and NPA's." This was sent to our counsel. So it was hoping that counsel would agree to that, yes.

Q Well, counsel is not going to agree to anything without the client's authorization; --

A Correct.

Q -- is that fair?

A Correct.

Q And did the Advisors ever authorize their counsel to try to negotiate a consensual order?

MR. RUKAVINA: Your Honor, I object to that. That's clearly attorney-client privilege.

THE COURT: Sustained.

MR. MORRIS: All right. I'll ask a different question.

BY MR. MORRIS:

Q Did the Advisors ever engage in negotiations with the Debtor over a consensual order, as was offered by the Debtor in this letter?

A I defer to legal counsel on that.

Q Okay. You're not aware of any such negotiations, right?

A I know there were discussions, particularly around our plans over the weekend, where there were offers of something related to the lawsuit. Removal or what -- I don't know the specific terms, but there were offers made, and I deferred to

counsel on that.

Q But we're here today because there is no consensual order pursuant to which the Advisors would present their plan to the Court and state specifically that the Debtor had no further obligation, correct?

MR. RUKAVINA: Your Honor, that's an irrelevant question. And again, it's litigation strategy and attorney-client privilege. And we're here today on a mandatory injunction.

THE COURT: Sustained.

MR. RUKAVINA: Not because --

THE COURT: Sustained.

MR. MORRIS: Withdrawn. I have no further questions, Your Honor.

THE COURT: All right. That concludes Mr. Norris's testimony. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. What else do you have, Mr. Rukavina? Your next witness?

MR. RUKAVINA: I have nothing further, Your Honor. The Defendants rest on this motion.

THE COURT: All right. Mr. Morris, anything further from you?

MR. MORRIS: No, Your Honor. I'm prepared to proceed to closing argument.

THE COURT: All right. I'll hear it.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. Your Honor, thank you for taking the time to listen today. We regret that we had to come down this path, but the Debtor felt that it had no choice at the time that it filed the action.

We think the evidence conclusively establishes that the Debtor had the contractual right to terminate the shared services agreements. It exercised that right. It exercised that right after putting the world on notice that it wouldn't be providing shared services after a specified period of time.

The Court is fully familiar with the Debtor's plan of reorganization, the asset monetization plan, the downsizing of employees that was expected. And it was the Debtor who had concerns about the funds, the investors, the marketplace, and, frankly, the Debtor's ability to implement its own plan of reorganization, as Mr. Seery so fully testified to.

You know, trying to do the right thing here, the Debtors extended the termination date by a couple of weeks. They engaged in earnest negotiations. I don't think there is any dispute at all that the parties actually reached an agreement on every single business term, every single business term, except Mr. Dondero's insistence for access to the Debtor's offices.

I think the Court is familiar with the record in this

case. There's already an injunction in place barring him from the Debtor's offices. The reasons for that are also familiar to the Court. I don't think the Debtor was at all unreasonable in taking the position that it did.

They did what they could, but they came to a point where they couldn't continue to provide services consistent with the plan of reorganization that had been presented to the Court. And in order to avoid the substantial risk of being impeded from executing on its plan, in order to avoid the substantial risk that would have occurred had it simply exercised its right and walked away -- the risk of market disruption, the risk of potential involvement by the SEC -- it had no choice but to file this lawsuit.

And honestly, Your Honor, for the life of me, I don't know why they didn't try to use this wonderful operating plan as negotiating leverage. I've never heard of such a thing. But that's their choice. We're not here today because they failed to do that. But had they done that, this lawsuit wouldn't exist.

Had Mr. Dondero not injected himself on Wednesday and decided that his access was more important than the rest of it, we wouldn't be here today.

Had the Advisors said, when we gave them the take-it-or-leave-it option on Wednesday, we're leaving it, thanks for the effort, we tried hard, this stuff means a whole lot to us, but

we have a great plan here, let's not litigate, there's no reason to do this, we wouldn't be here today.

We wouldn't be here today had they not withdrawn Option B on Friday.

I don't think -- again, this is summary judgment territory. There's no dispute about the facts. There's no dispute that, for the fourth time, the reason that we're here is because Mr. Dondero completely undermined the people who he had authorized to negotiate on behalf of the Advisors and the lawyers who did diligent work, who tried very hard to bring this to fruition, who were engaged in negotiations, as the record shows, not just getting to a deal but going further and preparing settlement documents, preparing wire transfers, only to have the rug pulled out from under them again.

The Debtors had no knowledge of any plan whatsoever for the transition of services. I think -- I have respect for Mr. Norris. I think that he overstates things, but that's okay. Everybody's allowed to -- their perspective. But clearly, there's a lot of pieces to that operating plan that aren't in place. But here, at the end of the day, Your Honor, we don't care.

What we want to do is complete the divorce, as Mr. Hogewood said. And I've got a proposal now that, you know, I hope will be acceptable to both the Court and to Mr. Rukavina. And the proposal would be to allow us to submit to Your Honor

by the end of the day tomorrow a proposed form of order that will contain a limited number of factual findings and will render this motion moot. And it would be moot because the Advisors have now put into evidence an operational plan that they have -- that they are committed to. They have said on the record that they no longer need any services of any kind from the Debtor, except access to the data, and we would be good with that. We would be prepared to just say this is moot because of the operational plan that Mr. Norris described in such great detail.

I don't want to burden the Court with a lot more. I think that that's a way to just resolve this to the satisfaction, really, of everybody.

I'll just briefly say on the jurisdictional issue and the arbitration, because they are issues out there, it's inconceivable that the Court doesn't have jurisdiction here. This matter concerns the Debtor greatly. You know, we're here precisely because we need the relief that we requested initially, and that -- and that, apparently, the -- that was the adoption and the implementation of a plan so that the Debtor knew it would have no further liability. It was the Debtor's plan of reorganization that was at issue here, its ability to downsize in the way it told this Court and its creditors that it would do.

So I don't think -- I don't think there's a question of

jurisdiction at all.

And with respect to arbitration, you know, I'll note, firstly, of course, that the Advisors, they filed the claim against the Debtor. They didn't move to lift the stay. They haven't relied on the arbitration clause when -- when it's good for them.

But more importantly, Your Honor, I don't think a motion of this type in particular is the subject of any arbitration provision. It only applies to one of the agreements, as I understand it, in any event. But it's the arbitration clause.

This isn't about the interpretation of the agreement. I don't think there's any dispute about the Debtor's right to terminate. I don't think there's any dispute about any, you know, language in the agreement. There's no interpretive provision of the agreement that we're talking about here. What we're -- all we're talking about is making sure that, you know, the Debtor wouldn't be taking on a potential liability. And I've gotten comfort from Mr. Norris that we're not, because, you know, Mr. Norris said that the Debtor -- that the Advisors can fully perform under the advisory services agreement, that there's nothing that the Debtor did to prevent the Advisors from fully performing under the Advisors' agreement, that they don't need any services from the Debtor going forward. And I think that's -- that really is what I think appropriately does render this motion moot.

And what I would propose, again, just to be clear, is that we could give a proposed order to Your Honor tomorrow at the end of the day, give Mr. Rukavina until the end of the day Thursday to make whatever edits he believes are appropriate, and then Your Honor will do whatever Your Honor thinks is best, as always.

THE COURT: All right. Well, while I like the concept, and I haven't heard from Mr. Rukavina yet, I'm really worried about false hope that you would prepare something, Mr. Rukavina would be fine, and I'd simply sign it without much time spent on it.

Let me start with this. You said the order, it would be something like an order resolving the motion. It'll contain certain findings of fact, you said, such as the Advisors have an operating plan, the Advisors need no services from the Debtor going forward except access to data. Okay. Would I really get an order that has 14 additional findings, and if so, what would those be?

MR. MORRIS: I think we would just go through -- I don't think that there's really any dispute as to these facts. There would be no findings in there about, you know, withdrawal of Plan B or we gave them an ultimatum or any -- there would be nothing like that, Your Honor. It would simply be: The parties were signatories to shared services agreements. The Debtor exercised its right of termination.

The parties have agreed to extend the termination date twice. The Debtor -- the Advisors have prevented -- I'm doing this off the top of my head, of course -- but the Advisors have prevented -- has -- have prevented -- presented uncontroverted testimony that they have an operational plan pursuant to which they will obtain all of the back-office and middle-office services that were previously provided by the Debtor. And in case there's any failure in their plan, they have got alternative arrangements with third parties and won't look to the Debtor in the future for any services of any kind other than the retrieval of their data. I think that's about what it would say.

THE COURT: Okay. My next question is this: Are we going to have a fight in a few days about the retrieval of the data issue? I mean, I just heard Mr. Norris say it was a no-big-deal exercise, that the Debtor just needed to make its IT director available and they would be standing ready to receive it, and he made it sound like a no-big-deal task.

MR. MORRIS: Yeah. I guess my hope is that we would be able to iron out that last wrinkle, but I think the solution to that is to simply say, if the parties have a dispute on that narrow issue, they come back to the Court, that the Court has continuing jurisdiction to resolve any dispute over -- I think it was the provision that Mr. Rukavina had put up on the screen, I forget, I think it was with Mr.

Dondero, where the Debtor has some obligation with respect to books and records.

THE COURT: Well, and Mr. Seery said earlier today that the Advisors can have access to the records and data, but not 24 hours a day and not without a cost. So is that going to be an issue, the cost?

MR. MORRIS: You know what, I have just I guess one other alternative that I'm just thinking off the top of my head. Maybe put in some type of third-party neutral who can, you know, to the extent that it's even necessary, and I hope that it won't be because I think we've gotten a lot of assurances about the lack of services that are needed going forward, but perhaps we can -- perhaps the Court can appoint some third party who would take the burden off of the Court of any future dispute and try to resolve it that way, you know, with the parties splitting the cost. That's an alternative.

THE COURT: All right. Mr. Rukavina, what do you say?

MR. RUKAVINA: Your Honor, I'd like to give a closing, please.

THE COURT: Yes.

CLOSING ARGUMENT ON BEHALF OF THE ADVISORS

MR. RUKAVINA: And please understand, Your Honor, this is going to be a difficult closing for me to give because I'm going to be rather blunt. My bluntness should never,

never substitute my deep respect for this Court and for bankruptcy courts and for bankruptcy jurisdiction. I'm a bankruptcy nerd. Hopefully Your Honor knows that. And my closing is also going to be made a little bit more difficult because I honestly don't understand why we're here today.

We are here in a lawsuit, not a negotiation before the Court. Mr. Morris and I had days to negotiate, we spoke, and we didn't reach an agreement. We are here on a six-day notice mandatory injunction where now the Debtor wants to have some order with some findings. We are here today on a motion for a mandatory injunction that compels my client to do something where we're not told what it is to do.

We are not here today, Your Honor, on Count One, their declaratory relief that they've terminated appropriately and done nothing wrong. We're not here today on that. It is inappropriate to make any findings on that. That issue will be resolved in due course.

We're not here today on any future duties. I heard the record, too. I heard the evidence. I can't imagine there being any future duties. But that is an advisory ruling that we're not here on today.

So, again, we are here today on whether my client is going to be enjoined to do something. And the reason why we will not agree to that --

THE COURT: Can I stop you? What I hear from the

Debtor is, in light of everything we have all heard the past seven hours, and apparently things the Debtor was not expecting to hear -- that is, we're ready to cut it off tomorrow, today; all we need is the data -- he's happy to say, okay, my request for an injunctive -- a mandatory injunction is moot now. I'm not asking the Court for that.

So, you know, I feel compelled to start with the pragmatic possible resolution of this. Why --

MR. RUKAVINA: Your Honor?

THE COURT: Why is that not an acceptable way of resolving this? He doesn't --

MR. RUKAVINA: Because --

THE COURT: He doesn't need an injunction, he says, if we can have an order.

MR. RUKAVINA: It's not -- Your Honor, I would then humbly submit that why doesn't he withdraw his motion? I mean, the problem that I have, Your Honor, is that anything that I agree to is going to submit my clients' internal business affairs to this Court's oversight.

I think Your Honor asked very important questions. What happens in two or three days' time if something happens? What about these findings? I am -- I think that this whole motion is moot, but I am very worried that even a finding of mootness is an exercise of jurisdiction over my clients' internal affairs.

What I think the Court should do is dismiss this motion -- I'm sorry, deny this motion without commentary, without findings, without conclusions. There's still Count One and Count Two which will be resolved in due course. And you know what? If my client messes up somehow in this transition -- not to mention that my clients are highly reputable, they're governed, they're regulated, there's other people looking at this -- they can come back to Your Honor.

But please understand my perspective, please understand my clients' perspective, because I think it's important. We have been hauled in front of this Court on allegations that we have willfully failed and refused to adopt and effectuate a plan. The allegations here are extreme. They've been shared with the creditors. They've been shared with our boards, who knew about this all along. They've been shared with the SEC. They've been shared publicly.

So I am glad that the record is now clear that these allegations were baseless when made, but even if they were made in good faith, they are baseless today.

But I don't even want the Court exonerating my clients' plan. I don't want the Court commenting on the wisdom of my clients' plan. Because we will not agree, as a nondebtor party, with all respect, Your Honor, to have this Court take any oversight over our affairs. It'll lead to some future dispute, some future contempt, some future sanctions, and

that's just not something that we as nondebtors are going to consent to.

The Court doesn't have jurisdiction. The Court doesn't have core jurisdiction.

But let's put all that aside. The four elements of an injunction, Your Honor. Where is any evidence of harm? Mr. Seery did not --

THE COURT: You know what? As long as we're not going to have a consensual order here, we need to take the issues you've raised, starting with subject matter jurisdiction. Okay? If I don't have consensus, I've got to examine my own subject matter jurisdiction.

So, on that point, do you say I apply the Fifth Circuit's pre-confirmation test of bankruptcy subject matter jurisdiction or post-confirmation test?

MR. RUKAVINA: Your Honor, the plan has --

THE COURT: Okay. I signed the confirmation order, but it's one day old. It's still appealable. And it's nowhere close --

MR. RUKAVINA: Your Honor?

THE COURT: -- to going effective, I fear. So, under either test, tell me why I don't have subject matter jurisdiction first.

MR. RUKAVINA: I would like to argue that the pre-confirmation -- that the post-confirmation test applies, but I

can't, in good faith. The plan has not gotten -- gone effective. There still is an estate. So, as of today, I think Your Honor is dealing with the pre-confirmation jurisdiction, --

THE COURT: Okay.

MR. RUKAVINA: -- which is definitely broader.

THE COURT: Okay.

MR. RUKAVINA: There is no jurisdiction, because you have heard no evidence of any effect on this estate as a result of this injunction being issued or not issued. Mr. Seery had every opportunity to be asked about harm, interference, how does this affect the reorganization? He did not give you any. This does not increase --

THE COURT: Well, what I think I heard, and I may be mixing up written pleadings, declarations, versus what he said today, but what I know I heard in either the papers or his oral testimony today was that the Debtor is worried about exposure to liability from who knows who.

MR. RUKAVINA: Okay.

THE COURT: The investors in the private funds or someone else for not having a smooth transition plan here and cutting things off on February 28th without knowing there's a plan. Okay? So if the estate is exposed to potential liability, is that an impact on the estate being administered, per *Wood v. Wood*?

MR. RUKAVINA: Of course it is, Your Honor. But we have to go to evidence. That's not in the evidence. That's in the brief that they filed. It is not in Mr. Seery's declaration. It is conclusory. It is not evidence. There is no evidence today of anyone that could sue the Debtor. I have no idea of anyone who could sue the Debtor -- pardon me -- regarding this.

THE COURT: He did say in testimony he was worried about the SEC if this was not done right.

MR. RUKAVINA: Well, Your Honor, with due respect, his worry is conclusory and his worry does not rise to an effect. He didn't tell you that the SEC has investigated or is threatening anything. It's a purely hypothetical worry. So I do not think that Your Honor has even related-to jurisdiction now that Your Honor has heard all of the evidence.

Now, let me be clear. Your Honor has jurisdiction over Counts One and Counts Two in this lawsuit, subject to arbitration, right? That's the declaratory action as to whether they terminated correctly. That's a legitimate exercise of jurisdiction. And their monetary claim for unpaid amounts: Clearly, the Court has jurisdiction. All I'm talking about is whether the Court has jurisdiction to enjoin a nondebtor party to do something. Not -- not to not do something, not a status quo injunction, but a mandatory

injunction.

And you have heard no evidence, Your Honor, no nexus as to how the injunction that Your Honor has been asked to order is going to affect the estate. None.

THE COURT: Okay. But you say a nondebtor third party. It's not just any nondebtor third party. Among other things, it's a counterparty to executory contracts that the Debtors say, you know, we either terminated these during the case or they're deemed rejected, and we're wanting some cooperation from the counterparty.

I mean, doesn't that give --

MR. RUKAVINA: Okay.

THE COURT: -- subject matter jurisdiction, because we're talking about a counterparty to an agreement that would have been governed by 365?

MR. RUKAVINA: I think, Your Honor, if there is some duty in those contracts or some duty in the law to act in a particular manner upon termination or rejection, there would be jurisdiction.

But just like when Your Honor ruled against us in December -- Your Honor said, I find nothing in this contract that provides for such a duty -- there's nothing in these contracts that provides any obligation on my client.

THE COURT: That is a different agreement. That was a different agreement, for the record.

MR. RUKAVINA: Fair enough.

THE COURT: That was --

MR. RUKAVINA: Your Honor, fair enough.

THE COURT: That was the CLO agreements that your clients were not parties to.

MR. RUKAVINA: But Your Honor asked the right question then, and that's still the right question: Point me to some statutory or contractual right for what you want. They have not pointed you to any.

So, yes, hypothetically, if these agreements -- let's just assume that these agreements required post-termination good-faith unwinding. There would be jurisdiction. But these agreements don't provide any of that. The only thing that's provided is that, post-termination, the Debtor shall promptly return to us our property. And that -- there's no problem with that. We trust that the Debtor -- we heard Mr. Seery -- the Debtor's not going to mess that up. It'll be done quickly and painlessly, I hope.

That's not what they're asking for. They're asking for Your Honor to tell my client how to conduct its internal business affairs, and there's nothing in these contractual rights.

So, hypothetically, let's just assume that the Court has some related-to jurisdiction. Okay. It's still not core jurisdiction. And these contracts have been terminated, Your

Honor. There is no live contract. No one has shown you any statute or regulation that governs. So, that's jurisdiction.

The same fact of no harm, the same fact of no right, goes to the elements of an injunction, recalling that a mandatory injunction requires a much greater, much clearer burden. Again, Mr. Seery did not testify as to any harm. He said he was worried about the SEC and he said something like it might make plan implementation more difficult. Again, conclusory allegations. Those are not -- that's not evidence of immediate and imminent injury. It is certainly not evidence of irreparable injury, and it is certainly not evidence of a nonmonetary injury.

So, again, I ask -- I understand Your Honor has been in this case for a long time. I understand Your Honor has been in the Acis case before that. I understand from Your Honor's confirmation ruling that you have formed certain opinions about my clients, opinions that I think are unfair, quite frankly, that basically conclude that we are a vexatious litigant and that we are the tentacles of Mr. Dondero. I ask you to put all that aside. Because that's what the Debtor wants you -- the Debtor wants you to just reflexively conclude that somehow we're nincompoops and incompetents and we need court supervision. Put all that aside, Your Honor, and just ask yourself: What am I being asked to do? I'm being asked to order a nondebtor as to how to conduct its own internal

business -- not even business related to the Debtor, but how to conduct its own internal business -- even if we are the biggest nincompoops, which absolutely is not borne out by the record.

This is the wrong court for any such relief. It's the wrong court.

The reason why I showed you that letter from last Friday was I thought it was -- I think Mr. Morris is an excellent lawyer and I've worked very well with him, but I think that the allegation is so fundamentally unfair, that somehow this is our fault because we didn't tell them about a backup plan and we wouldn't just consent to the entry of an order that gives Your Honor jurisdiction over us. That's unfair, Your Honor. This is an inquisition in that respect. In that respect, it's an inquisition.

We were sued. We defended ourselves. We're not -- this is the fourth lawsuit, by the way, that the Debtor filed against us, Your Honor.

And as I asked you at the confirmation hearing, what evidence is there that we're vexatious? Okay, we filed a motion in front of Your Honor that was frivolous. It happened. And we're glad that the Court didn't sanction us. We're glad. Perhaps the Court still will. But that's it. Nothing else that we've done.

We've been quiet in this case. We've been minding our own

business. We've been preparing a backup plan. We've done everything right. And the Debtor comes to you shocked, shocked, alleging that we don't have any plan, alleging that the sky is falling. And even when the Debtor learns that that's not the case, we still had to go through today.

Why did we go through today, Your Honor? Why did my client -- why did my client have to sit here like someone that had done something wrong, like a criminal defendant, and be inquired as to all of its internal business practices, with implications made that my client doesn't know what it's doing? Why did we go through today just to have some order that's a -- that provides for something?

They want a mandatory injunction, Your Honor. You should thumbs-up it or thumbs-down it. And if you thumbs-up it, it'll be without jurisdiction, without basis, and it'll be extraordinary.

I can just keep talking and talking, but I'll repeating the same points, Your Honor, so I thank you.

MR. MORRIS: Can I just have five minutes, Your Honor?

THE COURT: You can.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: You know, I think the Court can issue an order finding that the motion is moot on its own accord. It doesn't need a consensual order to do that. I think the Court

-- I would believe that the Court would have a factual finding to support the finding of mootness.

But I don't really get the righteous indignation at all. It's as if Mr. Rukavina didn't hear anything I said. Because we're most certainly not asking the Court -- we weren't even, in the motion, asking the Court to do anything specific other than direct the Advisors to adopt and implement a plan. It didn't have to be with us. We didn't care who it was with. We didn't care what the elements were. The fact of the matter is Mr. Seery testified extensively, not just about the potential impact this would have on the Debtor's plan of reorganization, but he testified that certain of the Debtor's employees had received threats. He testified, based on his experience, that this is a highly-regulated industry, and if there was -- if we walked away without any plan in place, which is exactly why he said we filed this motion, that it would be -- that it would be potentially catastrophic and that undoubtedly the SEC would be involved. And Mr. Rukavina cannot give the Debtor any assurances that it would have no liability. Mr. Rukavina, I'm sure, is not going to allow his client to indemnify the Debtor for any damages that may have occurred in the future.

We're a little far afield here, Your Honor. We simply wanted to make sure that there was a plan in place to avoid a catastrophe. That was the irreparable harm that we were

looking at. And at the end of the day, they came in -- you know, I wish they had done it last week. I wish they had told us last Thursday. I wish they had told us last Wednesday. I wish they had told us during the negotiations. I wish they had told us last Friday, instead of pulling Plan B. I wish they -- you know. But it doesn't matter. They don't have an obligation to do that and I'm not, you know, I'm not going to pretend that they do. It would have been better if they had. They didn't. But they did, they did what the Debtor needed them to do today, and that is present their plan to the Court.

And while we, you know, have questions about when it was prepared, whether it's fulsome, they like it, and that's the important part. And they're not going to look to the Debtor for any services in the future. That's the important part.

The risk that Mr. Seery was concerned about has been eliminated, and I, you know, appreciate that. And that's why I thought we came in here with a very rational and pragmatic solution, to just -- to just -- you know, they've done what we've asked for. We've gotten the relief that we've asked for. The Advisors have sworn under oath that they have an operating plan to obtain the essential services that the Debtor used to provide. That's the relief we were asking for. I'm not quite sure what there is left here.

THE COURT: Okay. Thank you.

All right. The first thing I'm going to say is that the

Court believes it has subject matter jurisdiction, bankruptcy subject matter jurisdiction, over the requested relief. If it's a pre-confirmation test that I am supposed to apply here -- that is, the *Wood v. Wood*, could this dispute have a conceivable effect on an estate being administered -- I find that that test is met.

I think the concern of potential liability and exposure on the part of the Debtor is well-founded, even if it was not articulated to the Advisors' satisfaction today. I think, based on the litigious history here between these parties and the contentiousness, I should say, between these parties during this case, there is certainly a well-founded concern, and certainly I think the Debtor is just being prudent, worried about the SEC, investors, the Advisors, the funds, someone else pointing fingers at the way the Debtor did or did not act in transitioning services over. I think that is a basis for subject matter jurisdiction under the pre-confirmation test.

If the post-confirmation test applies here, we know that Fifth Circuit cases such as *In re Craig's Stores*, *In re Case*, *National Gypsum*, among others, articulate the test of bankruptcy subject matter jurisdiction being could the outcome of the dispute bear on the implementation, the execution, or the interpretation of a confirmed plan? I think that test is likewise met here.

Obviously, the plan contemplated a separation, and this request for relief appears to be basically seeking some supplemental -- a supplemental order to supplement the confirmation order, to supplement the Debtor's attempt at divorcing these parties as part of the monetization plan.

So I think bankruptcy subject matter jurisdiction does exist here.

I didn't hear in oral arguments, closing arguments, anything about the arbitration, but I think there's a real question here whether the Advisors may have waived their right to invoke the arbitration clause that's in one of the shared services agreements, not both of them, by filing pleadings so often, participating in this bankruptcy case so often, without invoking that.

But again, as I see it, this adversary proceeding is largely -- essentially, I should say -- asking for an order supplementing the confirmation order, and it doesn't really seem like a dispute *per se* under the shared services agreements that have already been terminated.

So I think an argument can be made that there's been waiver here, but even if there's not, that this is core in that it bears on the plan confirmation, certainly more than a dispute arising under the literal terms of the shared services agreement.

I reserve the right to supplement and amend this, if I

need to, in a more thorough written ruling.

But anyway, based on the Court determining it does have subject matter jurisdiction here, I see it appropriate to enter an order that, based on the Court's several hours of testimony today from three different witnesses -- Mr. Seery, Mr. Dondero, Mr. Norris -- and based on many documents that have been submitted into the evidence, the Court finds that the shared services agreements were already terminated pursuant to their terms and can also be deemed rejected under 365 of the Code previously.

The Court will find that the Advisors do not need any further services from the Debtor under these agreements as of today's date, except access to data and records, which, based on the testimony of Dustin Norris, can be easily effectuated, Mr. Norris's testimony being that what the Debtor would need to do to allow access to the data is authorize the Debtor's IT director to transfer data and we stand ready to receive it. And data would include historical emails, vault emails, files in the system, and a number of other items, but, quote, there would almost be no work from the Debtor's end.

So, believing that to be the case, I would order that the Debtor stand ready between now and the 28th to provide that access and that the Advisors stand ready to receive that access. And if the process extends beyond February 28th, then it will have to be subject to further orders of this Court,

but the Court would expect there to be a cost if it extends past February 28th. And again, the Court would consider that in a further hearing, how much cost should be imposed on the Advisors. But the advisors have represented to me through Mr. Norris it's easy, it can be accomplished easily, so therefore I would think it could happen between now and the 28th, and if it does, no cost imposed on anyone.

I will further find that the Advisors have represented and the Court therefore finds that there is an operating plan in place for the Advisors to continue to operate uninterrupted beyond today. And again, the only thing I would envision that needs to happen between today and February 28th is the access to data.

So, having made these findings, the Court believes that the request for a mandatory injunction is moot and is therefore denied.

Are there any questions? Mr. Morris, I want you to be the scrivener, and, of course, run it by Mr. Rukavina. But are there any questions or concerns about what I've just articulated?

MR. MORRIS: I just have one, Your Honor.

THE COURT: Uh-huh.

MR. MORRIS: You made reference to rejection of the contract. From our perspective, it's not rejection. We don't want to open this up to a rejection claim of any kind. It

really was just a termination of the agreement, in accordance with the terms. And I had put the provisions up before the Court during my opening and walked Mr. Seery through. That's the basis for the --

THE COURT: Okay.

MR. MORRIS: -- termination of the agreement. It's not rejection at all.

THE COURT: Fair point.

MR. RUKAVINA: And Your Honor, there's no -- there's no -- yeah, there's no problem. There's no problem on that. We do not disagree. We do not disagree with Mr. Morris.

THE COURT: Fair point. I made the mistake of belts and suspenders, trying to fill in any hole there might be. But yes, I had the evidence that there was a termination of both agreements on November 30th. One of them had a 60-day window before it became effective, the other a 30-day. So they are terminated.

All right. Mr. Morris, anything else from you?

MR. MORRIS: No. We'll prepare a form of order.

THE COURT: All right. Mr. Rukavina, anything further from you?

MR. RUKAVINA: Your Honor, obviously, I have questions. I have reservations. I need to look at whether the Court's findings are going to be binding in this adversary proceeding. So, at this point in time, I'm just not prepared

to really say anything lest I get myself in trouble. But I thank you for your time today.

THE COURT: All right. Well, they are what they are, and I hope we're not in an argument about that down the road. But it seems like my hopes are always dashed when I want things to be worked out.

I don't want you to think my calm demeanor means I am a happy camper. I am not. I am beyond annoyed. I mean, I can't even begin to guesstimate how many wasted hours were spent on the drafting Option A, Option B. Wait. Let me pull up the exact words. Mr. Norris confirming, We withdrew Option B after the Debtor accepted it.

I mentioned fee-shifting once before in a different context, and, of course, we haven't even gotten to the motion for a show cause order declaring Mr. Dondero in contempt. I don't know if the lawyers fully appreciate how this looks. Mr. Rukavina, you said that I have formed opinions that you don't think are fair and made comments about vexatious litigation and whatnot. But while I continue, I promise you, to have an open mind, it is days like this that make me come out with statements that Mr. Dondero, repeating his own words, apparently, he's going to burn the house down if he doesn't get his baby back.

I mean, it seems so obviously transparent that he's just driving the legal fees up. It's as though he doesn't want the

creditors to get anything, is the way this looks. If he wants me to have a different impression, then he needs to start behaving differently. I mean, I can't even imagine how many hundreds of thousands of dollars of legal fees were probably spent the past two weeks on Option A, Option B, and all the different sub-agreements and whatnot. And as recently as Friday afternoon, the K&L Gates lawyer saying we have a deal, and then, oh, wait, maybe not, maybe we do, maybe we don't. And then Mr. Dondero acting like he had no clue what the K&L Gates lawyers were saying as far as we have a deal. And Mr. Norris distancing himself from having seen any of that, and I didn't have power. You know, I'm sure he had a cell phone, like the rest of us, that gets emails. I'm making a supposition. I shouldn't make that. But it just feels like sickening games.

And again, if this keeps on, if this keeps on, one day, one day, there may be an enormous attorney fee-shifting order. And, of course, I would have to find bad faith, and I wouldn't be surprised at all if I get there.

So I don't know if Mr. Dondero is listening. I suspect, if he is, he doesn't care much. But I am --

MR. DONDERO: I'm on the line, Judge.

THE COURT: Okay.

MR. DONDERO: I'm on the line.

THE COURT: I'm glad you're on the line. I cannot

overstate how very annoyed I am by hearing all these hours of testimony and to feel like none of it was necessary. None of it was necessary. Okay? There could have been a consensual deal --

MR. DONDERO: Judge, you have to pay attention -- Judge, you have to pay attention to what's going on, okay?

THE COURT: I am --

MR. DONDERO: When I was president of Highland, --

THE COURT: -- razor-sharp focused on what is going on. Okay? I read every piece of paper. I listen to every sentence of testimony. And what is going on --

MR. DONDERO: Okay. How about this, Your Honor?

THE COURT: -- is an enormous waste of parties and lawyer time and resources. People need to get their eye on the ball. Well, certain people do have their eye on the ball, but certain people do not. Okay? So we're done. You've got your divorce now. Okay? And if the operating plan is all shored up, as Mr. Norris testified, it sounds like you're in good shape. All right?

Mr. Morris, I'll look for the order from you.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Pause.)

THE COURT: Oh, Michael?

(Court confers with Clerk.)

THE CLERK: Hello? Hang on. Mr. Morris?

THE COURT: Is anyone still there?

THE CLERK: Mr. Rukavina is still there. Mr. Rukavina, Mr. Morris, are you all still there?

MR. RUKAVINA: Judge, this is Davor.

THE COURT: All right.

MR. RUKAVINA: I think we're all wondering whether we're going to have the contempt hearing.

THE COURT: Well, yes, that's why I came back in.

MR. RUKAVINA: I can't hear you, Judge. We can't hear you.

THE COURT: I realized I -- it's 4:19 Central time. We are not starting the contempt hearing.

Mr. Morris, are you there now?

MR. MORRIS: I am. I did have one suggestion.

THE COURT: All right. I neglected to mention our other setting, but we are not going to start at 4:19 Central time. Do we want to talk about scheduling on that?

MR. MORRIS: I did, Your Honor. And it's just an idea, and I understand we've had a long day. But I was going to suggest if there was any way to just get their motion *in limine* out of the way today, so that when we come back for the evidentiary hearing parties are fully prepared. If you don't want to do it, that's fine. Otherwise, I'm available at Your Honor's convenience.

THE COURT: All right. I am going to have you all communicate with Ms. Ellison about rescheduling that. I have no idea what my calendar looks like next week, but I'm not going to do it this week. I've got a backlog of other case matters that I need to get to this week.

MR. MORRIS: Okay.

THE COURT: So, you know, maybe we'll do it next week. On the motion *in limine*, you've not filed a response? It was just filed yesterday, so I'm guessing there's no response.

MR. MORRIS: Yeah. I was going to do -- I was going to do it orally. I'm happy to do a written response, and I'm happy to just proceed on the papers. I just think it would be helpful to have that, you know, or if we could put aside an hour later this week to do that, because then preparing, if we know the evidence is in or out, I think it'll just make the trial a lot more smooth.

THE COURT: All right. I barely had time to pore over it, so let me have Traci reach out to you all tomorrow and let you know do I want a hearing on it or not. I have an initial reaction. I don't know if Mr. Dondero's counsel is on the phone. I don't want to talk about this too much if he's -- do we have Dondero's counsel?

MR. WILSON: I'm present, Your Honor. John Wilson.

THE COURT: Okay. I will tell you right now that,

having done a quick review of it, I didn't feel inclined to grant it. I'm going to have the TRO in front of me and I'm going to hear the evidence of what happened, and it's either going to match up as a violation of the provisions of the TRO or not. You know, I feel -- I'm not a jury. I can decide whether it is violative of the TRO or not. The theme of it was, oh, it's going to have a prejudicial effect. I mean, I've already heard about a lot of this. So I'm inclined not to grant it. But, again, I did a very quick look at it at 5:00 o'clock last night. And that's why I asked Mr. Morris, was he going to have a response, because --

MR. MORRIS: Yeah. I was planning to do it orally today, Your Honor. If I may just have until 5:00 o'clock tomorrow, I'll submit an opposition that won't exceed five pages.

THE COURT: Okay. So that's what we'll do. And then once I've looked at the motion more carefully, as well as the response, I'll decide if I need oral argument or if I'm just going to rule on the pleadings, okay, and Traci will let you all know. All right? And again, Traci will coordinate with you tomorrow or sometime this week about a resetting on the contempt motion.

All right. Thank you.

MR. MORRIS: Thank you, Your Honor.

MR. WILSON: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 4:23 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 **02/24/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

EXHIBIT 80

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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	June 8, 2023
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
	)	HMIT'S MOTION FOR LEAVE TO
	)	FILE VERIFIED ADVERSARY
	)	PROCEEDING (3699)
	)	

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

APPEARANCES:

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

DALLAS, TEXAS - JUNE 8, 2023 - 9:42 A.M.

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

THE COURT: Good morning. Please be seated. All right. We are here this morning for a setting in Highland. This is on a motion of Hunter Mountain for leave to file an adversary proceeding. I will start out by getting appearances from lawyers in the courtroom.

MR. MCENTIRE: Yes, Your Honor. Sawnie McEntire along with my partner Roger McCleary and Tim Miller on behalf of Hunter Mountain Investment Trust, Ltd.

THE COURT: Thank you.

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for the Reorganized Highland, for the Highland Claimant Trust. I'm joined by Mr. Pomerantz, Mr. Demo, and Ms. Winograd.

THE COURT: Good morning.

MR. STANCIL: Good morning, Your Honor. Mark Stancil from Willkie Farr & Gallagher for Mr. Seery. I'm joined by my colleague Josh Levy.

THE COURT: Good morning.

MR. MCILWAIN: Good morning, Your Honor. Brent McIlwain from Holland & Knight here for Muck Holding, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, and

Stonehill Capital Management, LLC.

THE COURT: Thank you. All right. Is that all of our lawyer appearances? I know we have observers on the WebEx, but I assume you are just observers. We scheduled this to be a live hearing for participants.

All right. Well, we had some ground rules for how this would go forward today. We, of course, have had two -- I call them hearings on what kind of hearing we're going to have. We've had two status conferences. And so our ground rules were set. Three hours of total presentation time for each the Movant and the aggregate Respondents. We also had an order regarding what discovery would or would not be allowed.

And to my surprise, there were a flurry of pleadings. We're a few minutes late getting out here because we were trying to digest what was filed late yesterday and into the night.

So I understand we have a controversy about a couple of expert witnesses who were listed on Monday on the Movants' exhibit and witness list. And I've seen a motion to exclude the expert witnesses' testimony. And I think we need to address that right off the bat. I don't want to take too much time on this, because, again, we're going to finish today, and I won't let this housekeeping matter eat into our three hours, but I want to get going. So I'll hear from Movant, Mr. McEntire.

MR. STANCIL: Your Honor, may --

THE COURT: Go ahead.

MR. STANCIL: We moved to exclude, so I would propose that my colleague, Mr. Levy, address this motion very briefly if --

THE COURT: Well, I guess --

MR. STANCIL: Or I will do as --

THE COURT: -- that actually makes sense.

MR. STANCIL: Okay.

THE COURT: I was thinking Mr. McEntire teed up the issue, but I suppose you did with the motion to exclude. So, Counsel?

MR. LEVY: Thank you, Your Honor. Josh Levy on behalf of Mr. Seery.

So, we think our papers largely speak for themselves, but two additional points we'd like to raise. In the response filed by Hunter Mountain this morning, and this is Docket Entry 3828, in Paragraph 11, they argue that this is a bench hearing on colorability, not a trial where junk science is a concern. But junk science is precisely what they're trying to introduce here. They have raised two expert witnesses, one who purports to be an expert in compensation but has no experience whatsoever in evaluating compensation, and they provide no methodology for their conclusion.

For example, they claim to have identified red flags.

They never explain what those red flags are, why they are red flags, or how they determined they were red flags. This is junk science, precisely what the Federal Rules are designed to exclude.

But that shouldn't detract from the broader procedural point that this is the first time we're hearing about expert witnesses, at 10:00 p.m. three days before the hearing. This is a trial by ambush. This motion was filed in March, we've been litigating this motion for over two months now, and this is the first time we're hearing about any expert witnesses.

As Your Honor noted, we've had multiple conferences. We've had rules setting the ground rules for this hearing. We've had orders setting the scope of discovery. But now Hunter Mountain is trying to pull a bait-and-switch. After never mentioning any experts, after obtaining orders limiting the scope of discovery, they then wait until right before the hearing to disclose their experts, ensuring that these experts are insulated from any kind of discovery and can ambush us at the hearing.

I'm happy to answer any other questions, but we believe they should be excluded and the accompanying exhibits should also be excluded.

THE COURT: All right. Thank you. And the accompanying exhibits, I don't review exhibits before a trial or a hearing because I don't know what's going to be objected

to and admitted. So do you want to point out, were there expert reports in the proposed exhibits?

MR. LEVY: These were charts and analyses prepared by their experts, not actual expert reports.

THE COURT: Okay.

MR. LEVY: In their witness and exhibit list, Hunter Mountain included several paragraphs that I guess serves as what would be their expert reports. And then it would be Exhibits 39 through 52, which consist of CVs, materials reviewed, and then what they term "data charts" prepared by their experts.

THE COURT: 39 through 52? Oh, I'm looking at the wrong exhibit notebook. Oh.

(Pause.)

THE COURT: Okay. Here we go. All right. No questions at this time.

Mr. McEntire?

MR. MCENTIRE: Yes, Your Honor. May I proceed?

THE COURT: You may.

MR. MCENTIRE: Again, my presentation and response is subject to our objection concerning that any evidence is being admitted for any purpose, other than what we believe is the proper standard of review. So my response and our offer of these experts is subject to that objection.

With that said, Mr. Levy's argument he just presented to

the Court presupposes that my client has a duty under 9014 to provide a report, which we do not; to provide detailed disclosures, which we do not, because 9014 is specifically exempted from the scope of Rule 26. What we did, we didn't have to do. What we did, and I made the decision to provide them some disclosure and identification of who they were, their backgrounds, and --

THE COURT: Well, let me stop you.

MR. MCENTIRE: Certainly.

THE COURT: "What we did, we didn't have to do." The Local Rules, first of all, do require an exhibit and witness list. And --

MR. MCENTIRE: We've provided that.

THE COURT: I know. I know. But you -- I thought I heard you --

MR. MCENTIRE: No, no.

THE COURT: -- saying you didn't have to do that. You do have to do that.

MR. MCENTIRE: No, no, no.

THE COURT: But I guess what you're saying is --

MR. MCENTIRE: What we provided was more than what the Local Rules require.

THE COURT: How so?

MR. MCENTIRE: We provided CVs. We provided their backgrounds. We disclosed in the actual witness description

who they were and the key components of their opinions. And we refer to their data charts. That is not something that the Local Rule requires.

THE COURT: Okay. Well, let me back up. We have our Local Rules, but then we had our two status conferences --

MR. MCENTIRE: Yes.

THE COURT: -- on what the format of the hearing --

MR. MCENTIRE: Yes.

THE COURT: -- would be.

MR. MCENTIRE: Yes.

THE COURT: And, of course, there was extensive discussion, evidence or no evidence? What did the legal standard, colorability, require?

MR. MCENTIRE: Yes.

THE COURT: And I came out in the end and said, if people want to put on witnesses, they're entitled to put on witnesses. I think there may be a mixture of a fact question and law question on colorability. So, and then I set a three-hour time limit and I said, if someone wants to depose Mr. Seery and Mr. Dondero, they can, but no more discovery other than that. Okay?

MR. MCENTIRE: I understand.

THE COURT: Why then did you not say, well, wait, Judge, if it's going to be evidence, we're just letting you know, in full disclosure, we might call a couple of experts,

and this may impact your decision on what kind of discovery can happen. And this may impact your decision on whether three hours each side is enough.

MR. MCENTIRE: Well, Your Honor, in fairness, I don't think we had made a final decision to actually designate any experts. And at the time, the focus was on other witnesses. But there was no exclusion, there was no limitation at all on my right to bring an expert. And the Rules are very clear. And the Court's --

THE COURT: But I specifically limited discovery, and it was on your motion. It was on your motion we set the hearing on --

MR. MCENTIRE: Actually, --

THE COURT: You know, did you need a continuance, because if we were going to have evidence, maybe you needed a continuance. And then there was a discovery issue raised.

MR. MCENTIRE: To be clear, Your Honor, I'm looking at your orders.

THE COURT: Got them in front of me.

MR. MCENTIRE: Your order of May 26, 2023. You said, You can put on your witnesses and the Court is going to rule. You made no limitations as to who the witnesses would be. Your order did not limit the scope of witnesses to simply Mr. Seery or Mr. Dondero. In fact, any suggestion that you did limit the witnesses is contrary --

THE COURT: Now, which order are you looking at?

MR. MCENTIRE: I'm looking at the May 26, 2023 order, Page 51, Lines 3 through 14.

THE COURT: Okay.

MR. MCENTIRE: You also stated --

THE COURT: I have -- have I entered three orders on this? I've got a May 10th order. I've got a May 22nd order.

MR. MCENTIRE: And I would also point out, Your Honor, --

THE COURT: Could you answer my question? I want to look at what you're looking at.

MR. MCENTIRE: Certainly.

THE COURT: Here we -- this is the one. Okay. Aha. Okay. May 26.

MR. MCENTIRE: Page 51, Lines 3 through 14.

THE COURT: I've entered three orders on what kind of hearing we're going to have. Okay. So you're looking where?

MR. MCENTIRE: Page 51, Lines 3 through 14. "You can put on your witnesses."

THE COURT: Page 51?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Oh. You're looking at a transcript, not the order.

MR. MCENTIRE: That's right. I apologize.

THE COURT: Okay.

MR. MCENTIRE: Yeah, I'm looking at the transcript from the hearing.

THE COURT: Okay. Well, I'm looking at my order.

MR. MCENTIRE: And the order, the order also specifies no limitation at all in connection with the -- the --

THE COURT: But my order was based on what was discussed that day.

MR. MCENTIRE: And what was --

THE COURT: If you had said, hmm, Judge, if you're going to allow evidence, we may call a couple of experts, then there would have been a whole discussion about that and did I need to limit the discovery, as I did. And there would have been a whole discussion of, well, three hours, three hours each side, is that going to be enough if we have experts?

MR. MCENTIRE: The discovery ruling that you made was on my motion, and at the time I was not seeking to take any expert depositions. And you denied my request to take ample discovery. You limited my right to take only one deposition, without documents.

The issue of taking expert discovery was not even on the table. However, you made it very --

THE COURT: Well, that's my point precisely. The whole purpose of the hearing was, what kind of hearing are we going to have on June 8th?

MR. MCENTIRE: I understand. And our position --

THE COURT: We had already had one status conference on argument only versus evidence. And I allowed you all to file some briefing, which you did. And then I issued an order after the briefing, saying, I think I should allow evidence on the colorability question. I'm not forcing anyone to put on evidence, but if you want to put on evidence, you can.

And then you filed your motions and we had the next status conference on what kind of hearing we're going to have. And there was more argument: We don't think the evidence is appropriate, but if evidence is appropriate, we want you to continue the hearing to allow all kinds of discovery. I don't know what. And it was right before Memorial Day, and I hated the fact that a bunch of subpoenas were going to go out and ruin people's holidays. But there was no discussion then of, okay, but just so you know, since you have made the ruling that evidence can come in, we're going to have a couple of experts.

MR. MCENTIRE: As I've already mentioned, Your Honor, we had not made a decision to call experts at that time. We made a decision to call the experts shortly before we filed our designations.

The point here is this. The Rules do not require me to provide any more disclosure than I have. I have gone over and above the Local Rules.

If the Court believes that it would have allowed more time for this hearing, I would advise the Court that opposing counsel vehemently opposed any type of postponement or continuance. The discovery that I was requesting was discovery from fact witnesses. Experts were not at issue at that time. Experts are --

THE COURT: Because --

MR. MCENTIRE: -- at issue now.

THE COURT: -- nobody knew that experts might be called.

MR. MCENTIRE: I have a right to call experts, Your --

THE COURT: It changes the whole complexion.

MR. MCENTIRE: But I have a right to call experts, under the Rules. I have a right, a fundamental due process -- let me -- may I finish, Your Honor? A fundamental due process right to call experts. Their attempt to charge some type of *Daubert* challenge is nothing but a shotgun blast on the wall, having no meaning at all. At a minimum, I have a right to put the witnesses on the stand and we'll have a *Daubert* hearing.

If they want more time, they need to ask for it. They didn't ask for it. Their solution is to strike my experts, which is improper. It would be improper for this Court to strike my experts when they have been properly tendered under the Local Rules. They have not cited an alternative remedy.

If they want the alternative remedy, they need to ask the Court.

THE COURT: My next question is: How do you propose to get this all done in only three hours?

MR. MCENTIRE: We intend to move quickly.

THE COURT: But, see, now they, I'm guessing, prepared their case assuming there weren't going to be experts. And they, if they're good lawyers, which I know you all are, they have their script of the kind of things they were going to ask the witnesses.

MR. MCENTIRE: Well, did they have a --

THE COURT: And now they've got to carve out time for two last-minute experts?

MR. MCENTIRE: They had an option. And one of the options was they could have called me up on Tuesday and asked for their depositions and I probably would have agreed.

THE COURT: I already said no depositions except Seery and Dondero.

MR. MCENTIRE: Then they could have come and filed a different kind of motion with the Court.

Their only remedy that they're seeking is a draconian one. There are other options that are more consistent with the implementation of due process here, Your Honor, not striking my experts, which were properly identified under the Local Rules.

If the Court is going to strike my experts, note our objection. We are tendering our experts. We will put -- like to put a proffer on for the Fifth Circuit or for the appellate process. But if the Court is going to strike our experts, then it needs to do so. We object because we have done everything correctly.

THE COURT: Okay. Here's another problem. I have not had time to process their motion to exclude. Beyond the procedural issues, they are saying junk science, that there's inadequate expertise on the part of I guess at least one of them regarding executive compensation. I haven't had -- they filed their motion to exclude at 4:00-something yesterday. Okay?

MR. MCENTIRE: I understand.

THE COURT: Now, yeah, I could have stayed up all night. I stayed up pretty late anyway, by the way. But --

MR. MCENTIRE: Well, first of all, --

THE COURT: -- I haven't even had the time to process and intelligently rule on their motion --

MR. MCENTIRE: I appreciate that, and I'll respect --

THE COURT: -- as far as the --

MR. MCENTIRE: I'll respect the Court's statement.

THE COURT: -- junk science argument.

MR. MCENTIRE: I'll respect the Court's statement. Their process and the procedure they've adopted is improper,

because if you're going to have a *Daubert* hearing, that's a live hearing. Or they're going to have to have evidence to support their challenge. This is simply a conclusory shotgun blast on the wall, Your Honor.

If you even want to consider a *Daubert* challenge, the proper procedure is to put the witnesses on the stand and have an opportunity to have a proffer of evidence and a cross-examination. That's the proper procedure. Throwing something and innuendo and rhetoric and conclusions is not a proper *Daubert* motion at all. The Court could deny their *Daubert* motion just on those grounds.

THE COURT: I'm not going to rule on a motion that I've barely had a chance to read, not to mention your response that was filed at 8:00-something this morning.

MR. MORRIS: It was.

MR. MCENTIRE: It was. Well, then the option is you need to continue the proceeding to allow the experts to take the stand.

THE COURT: Well, I know you have thought on that, but here is something I'm contemplating doing. We'll go forward with the hearing in the manner my order said we would go forward with it. My, I guess, Order #3 of my three orders. And at the end of the evidence, you can argue in closing, each of you, why we should keep the evidence open to come back another day on only the experts. But time matters. If you've

all already used your three hours on each side, then are we going to come back for five minutes on each of them? I mean, I don't know.

And then, of course, I would have to, if I ruled in that way, I believe I would have to give them a chance to depose these people.

MR. MCENTIRE: I think that would be reasonable.

THE COURT: Okay. But you think you can get all of your evidence in, other than your experts, and your opening statement, if any, your closing argument, if any, in three hours?

MR. MCENTIRE: I'll do my best.

THE COURT: Well, if you -- it's not a matter of -- I'm just saying this may all be an academic argument, because I'm not increasing this to more than three hours each. We've fully vetted that.

MR. MCENTIRE: Well, what the Court is then doing by virtue of your ruling is that you're making me actually present my evidence in a shortened form today, two hours, two and a half hours, not knowing how -- whether or not you are actually going to allow experts.

So, without the certainty, I will have to abbreviate my entire presentation, giving them the advantage of putting more evidence on than I, in an effort to anticipate a positive ruling, which you're not prepared to provide yet. And so I'm

actually being penalized.

THE COURT: Counsel, we had two status conferences on what kind of hearing we were going to have.

MR. MCENTIRE: I understand.

THE COURT: Now, the fact that you had not decided your strategy for this hearing, that's not my fault. Again, we had two hearings on what kind of hearing we were going to have today. We could have fully vetted this. I could have heard about the experts, I could have decided if we were going to continue the hearing past June 8th, could have decided if we were going to allow more depositions.

MR. MCENTIRE: Your Honor, --

THE COURT: I could have fully studied the merits of the motion to exclude and decided if this is junk science or not.

MR. MCENTIRE: I would request a ruling at this time, Your Honor, on the experts. If you are not inclined to provide a ruling to me on the experts at this time, I would effectively be penalized on my time limits. I will have to set aside enough time to put the experts on, not knowing, not knowing whether you're going to give me the opportunity to do so until the end of the day. And that would be -- that would be punishment.

THE COURT: Isn't this going to be just preparing your case you would have -- I mean, going forward with your

case the way you would have?

MR. MCENTIRE: No, I don't -- really don't think so. I think there's --

THE COURT: I mean, --

MR. MCENTIRE: There's a difference.

THE COURT: -- you did not prepare your witnesses and your possible cross-examination with the expectation of I'll get my two experts in?

MR. MCENTIRE: My -- of course. But the point is, then I'm going to have to set aside a half an hour or maybe even longer from my other witness preparations, not knowing whether you'll even give me that time.

THE COURT: Isn't the other side going to have to do the very same thing?

MR. MCENTIRE: No.

THE COURT: Why not? They don't know how I'm going to rule. I don't know how I'm going to rule. I have not studied the motion to exclude the way I should.

MR. MCENTIRE: Okay. Well, Your Honor, we request a ruling now. But if the Court is not inclined to do so, please note our objection.

THE COURT: All right. I'll give the Movants the last word. And I say "Movants" plural. I'm trying to remember where I saw a joinder and when I did not. Did I see a joinder? I can't remember.

MR. MORRIS: Can we just have a moment, Your Honor?

THE COURT: Okay. Okay.

MR. MCILWAIN: Your Honor, my clients did file a joinder, but --

THE COURT: Okay.

MR. MCILWAIN: -- I'm going to let them handle this.

THE COURT: Okay.

(Pause.)

THE COURT: Counsel?

MR. LEVY: Thank you, Your Honor. Two brief points we'd like to make. The first is on the Rules. So, Hunter Mountain is focused on Rule 26(a) regarding reports. However, Rule 26(b) applies to contested matters under Rule 9014. And as we explain in Paragraph -- we explain in our brief, that -- or, in Paragraph 19 of our brief, that under Rule 26(b) we're entitled to depose the experts.

And so we agree with Your Honor's suggestion that if there's going to be any sort of experts, then we need the opportunity to depose them. This is Rule 26(b)(4)(A), which expressly does apply to contested matters under Bankruptcy Rule 9014(b).

The second point is we agree with the approach Your Honor has proposed. We think, for today, both sides can put on their full cases without expert witnesses. Both sides can have the full three hours, which should address Hunter

Mountain's concern. And if Your Honor decides at the conclusion of the hearing that expert testimony would be helpful, then we could take the opportunity to depose their experts and then come back for an additional half-hour for each side to address any expert testimony that Your Honor believes would be helpful.

THE COURT: Okay. Is your proposal that you each today would be limited to two and a half/two and a half? Or three/three, and then another hour, 30 minutes/30 minutes, if I --

MR. LEVY: Three/three.

THE COURT: -- decide to allow any experts?

MR. LEVY: Yeah. Three. Three and three for each side, the hearing contemplated by Your Honor's orders, today. And if Your Honor decides that expert testimony would be helpful, we could come back for an hour, for half an hour on each side, regarding experts.

THE COURT: All right. Mr. McEntire, what about that?

Oh, I'm sorry, did you --

MR. STANCIL: Oh, I'm sorry. Just one additional point, Your Honor. We would ask that Your Honor's ruling on the ultimate admissibility of this be limited to what they've actually put in front of us. The day for the hearing is today, so I think I'd like -- I'd suspect Your Honor would

like to avoid another raft of submissions. So we would just ask that they live or die with what they've said in the way of methodology, disclosures, and the like.

THE COURT: Okay. Mr. McEntire, this seems like the best of all worlds, maybe.

MR. MCENTIRE: Well, it may be the best of the worlds in which we're operating.

My first position is that the experts are admissible, period. And the Rules do not require anything more than what we've already done. In fact, we've done more than we were supposed to.

THE COURT: What is your argument about 26(b)(4), which --

MR. MCCLEARY: If they want to take a deposition, they could have called me up and asked for it.

MR. STANCIL: Your Honor, I was --

THE COURT: Wait a second. They were under a court order. Okay?

MR. MCENTIRE: They could have -- they could have sought --

THE COURT: They were under my order. Okay? They would have been violating my order if they had done it.

MR. STANCIL: I was also, Your Honor, I was in a --

THE COURT: Not to mention that it was --

MR. STANCIL: I was in an airplane from 9:00 a.m.

Tuesday until 9:00 p.m. Tuesday.

THE COURT: I'm surprised a lot of you got here, with the Martian atmosphere that I saw pictures of.

Yes. That's not realistic, to think that you disclose an expert on Monday for a Thursday hearing and they can call you up and --

MR. MCENTIRE: The other --

THE COURT: -- quickly put together a deposition. So, --

MR. MCENTIRE: Sure. The other option, --

THE COURT: Uh-huh.

MR. MCENTIRE: -- of course, Your Honor, as I mentioned before, and I'm not going to repeat myself, is they -- there's other forms of relief they could seek. But under the circumstances, and in light of your apparent leaning on the issue, then this is the best under the circumstances that they've suggested. We'd like an hour each.

I would also point out that -- well, anyway, that's it, Your Honor. Thank you.

THE COURT: All right. So we are going to go forward as planned, three hours/three hours. No experts today. In making your closings -- well, this is kind of awkward. I'm trying to think if we really have closing arguments, when you don't know if it's -- it doesn't seem to make sense. Like, I guess we could have closing arguments if you want, subject to

supplementing your closing arguments if we come back a second day with the experts. Okay?

And I'm not making a ruling today on the motion to exclude. I'm going to hear what I hear. And maybe what we'll do is I'll give you a placeholder hearing if we're going to come back on the experts. Then I'll go back and read the motion, the response, and make my ruling on are we coming back for another day of experts. Okay? Got it?

And with regard to the comment about not adding to, I think that's a fair point. You can't add new exhibits that the expert might talk about or that you might want me to consider between now and whenever the tentative day two is.

MR. MCENTIRE: Understand. We agree with that.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, there is one -- one exhibit that has a small typo transcription of a number on it. So we would like to substitute for that. It's a minor detail. But I'll provide opposing counsel with that. But it's very minor.

THE COURT: You have it today, I presume?

MR. MCCLEARY: Yes, we have it.

THE COURT: Okay. So as long as you hand it to them today.

MR. STANCIL: No objection, Your Honor. We do -- I think someone is back at the office working on a short reply

on our motion, which I assume we could file in support of -- I mean, we filed our motion. They filed an opposition. I assume we would be entitled under the Rules to file a short reply on the actual exclusion issue.

THE COURT: That is fair, but let's talk about timing. You said someone is back at the office working on it. Could you get it on file by Monday?

MR. STANCIL: Yes, ma'am.

THE COURT: Okay. Then that'll be allowed if it's filed by the end of the day Monday.

MR. MCCLEARY: Your Honor, I'm providing a copy of Exhibit 43 to opposing counsel, which is the substitute exhibit.

And obviously, we'd like to have an opportunity to respond to what their filing is on Monday.

THE COURT: No. I mean, motion, response, reply. That's all our Rules permit. Okay? Motion, response, reply. Okay.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: All right. Well, with that, do the parties want to make opening statements? If so, Mr. McEntire, you go first.

MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint I would like to utilize, if I could.

THE COURT: You may.

MR. MORRIS: Your Honor, before we get to that, the Plaintiff has objected to virtually every single exhibit that we have. Should we deal with the evidence first, because I don't want to refer to documents or evidence in my opening that they're objecting to. They've literally objected to every single exhibit except one, although I think they're withdrawing certain of those objections.

I don't -- I don't know if the Court has had an opportunity to see the objection that was filed to the exhibits.

THE COURT: That was what was filed like at 11:00 last night or so?

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock this morning, I actually typed out a response that I'd like to hand up to the Court. But we've got to resolve the evidentiary issues before we get to this.

THE COURT: Okay. Well, --

MR. MORRIS: And I don't know what their position is going to be --

THE COURT: -- as a housekeeping matter, let's do that first. And let's start with the Movants' exhibits. Do we have any stipulations on admissibility of Movants' exhibits?

MR. MORRIS: So, if I understand correctly, Your Honor, you'd like to know if we object to any of their exhibits first?

THE COURT: Yes. And --

MR. MORRIS: Okay.

THE COURT: -- we'll hold --

MR. MORRIS: Because we have very limited objections.

THE COURT: Yes. We're going to keep on hold for now your exhibits to the expert-related, --

MR. MORRIS: Yes.

THE COURT: -- your objections to the expert-related ones.

MR. MORRIS: Right. I think -- I think --

THE COURT: So let's not talk about, for this moment, --

MR. MORRIS: 39 --

THE COURT: -- 39 through 52.

MR. MORRIS: Okay.

THE COURT: But as for 1 through 38 or 53 through 80, do the Respondents have objections?

MR. LEVY: Yes, Your Honor. We have very limited objections.

THE COURT: Okay.

MR. LEVY: So, the three to which we object in their entirety are Exhibits 24, 25, and 76, all of which we object

to on relevance grounds.

Exhibits 24 and 25 are email correspondence between counsel in an unrelated state court matter where Mr. Seery is responding to a third-party subpoena regarding the preservation of his text messages on his iPhone. This has absolutely nothing to do with whether or not the Movants have stated a colorable claim for breach of fiduciary duties.

What this appears to be is related to an entirely separate motion raised by Dugaboy regarding the preservation of Mr. Seery's iPhone. So we object to Exhibits 24 and 25 because they have simply nothing to do with the issues in this hearing.

We also object to Exhibit 76, which is a filing from two years ago in a different bankruptcy matter, from *Acis*, regarding an injunction in place in that -- in that plan about issues that -- that occurred before the bankruptcy was in place. So this is just an entirely different case from issues that arose many, many years ago that, again, has nothing to do with this case.

THE COURT: This was whether the *Acis* plan injunction barred some lawsuit?

MR. LEVY: Exactly.

THE COURT: Okay. Okay. Is that all?

MR. LEVY: We also have limited objections to certain exhibits that we think are admissible for the -- for the fact

they're said, but not the truth of the matter asserted.

For example, Exhibits 1 and 2 are complaints filed in those actions. We have no objection to those coming in, but not for the truth of the matter asserted. These are advocacy pieces and pleadings. They're not actually substantive evidence.

And we would have similar -- similar objections to Exhibits 4, 6, 11, --

THE COURT: Wait. 4 is James Dondero Handwritten Notes, May 2021.

MR. LEVY: Yes.

THE COURT: Okay.

MR. LEVY: So, we have no objection to that coming into evidence.

THE COURT: Uh-huh.

MR. LEVY: But there are -- those are hearsay. They're not admissible standing by themselves for the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: And Exhibit 6 are news articles. Similarly, they're hearsay, but we have no objection to them coming in. They're admissible for the fact that they're published, but not the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: Exhibit 11, which is a motion filed by the

Debtor. Similarly, it's for -- we have no objection to anything on the docket coming in, but anything that's an advocacy piece, like a motion as opposed to an order, we think is not admissible for the truth of the matter asserted.

And that would be a similar objection, then, for Exhibit 58, which is a complaint.

Exhibits 59, 60, and 61 are -- are letters by counsel for Mr. Dondero to the U.S. Trustee's Office. We similarly have no objection to that coming in, but not for the truth of the matter asserted.

And Exhibits 62 and 63, Exhibit 62 is an attorney declaration attaching, similarly, documents that are -- that are advocacy pieces.

And Exhibit 63 appears to be an asset chart prepared by counsel. So it would be a similar objection.

And Exhibit 66 also is a declaration attaching documents.

No objections to those coming in, but not for the truth of the matter asserted.

Exhibits 72, 73, and 74 are all -- well, 72 are press articles. 73 and 74 are briefs. We don't object to that coming in, but we object to it being admitted for the truth of the matter asserted.

And similarly, Exhibit 80 is a pleading in an SDNY bankruptcy. We have no objection to that coming in, but not for the truth of the matter asserted.

And finally, Exhibits 81, 82, 83 don't specify particular documents. They appear to largely be reservations of rights. And so we would likewise reserve our right to object once we see any specific documents --

THE COURT: Okay.

MR. LEVY: -- admitted under these exhibits.

THE COURT: Okay. Mr. --

MR. LEVY: And I understand my colleague has an objection to Exhibit 5.

MR. MORRIS: Exhibit 5, which is the subject, I believe, of an unopposed sealing motion. That document has to do with purported restrictions on certain securities. Since it's subject to a sealing motion, I don't want to say too much more than that, other than that -- we don't think it should be admitted, because you can just see from the information on the document that it was created after the termination of a shared services agreement.

However, I'm hopeful that we can resolve the issue by simply stipulating that in December 2020 MGM was on a restricted list. What that means, what the consequences of it, the rest of it can be the subject of discussion. But if they're trying to get that document in for that particular fact, we would stipulate to it in order to resolve that dispute.

THE COURT: All right. Well, that's lots to respond

to, Mr. McCleary. Why don't we start with the outright objections: 24, 25. It's apparently text messages related to Mr. Seery's iPhone. I know we've got another motion pending out there that's not set today regarding Mr. Seery's iPhone.

MR. MCCLEARY: Yes, Your Honor. Well, as the Court is aware, we've attempted to get discovery from Mr. Seery in relation to the allegations in this lawsuit. And by the way, all of our exhibits that we're tendering are subject to our objections that this should not be an evidentiary hearing. I just want to make that clear.

THE COURT: Understood.

MR. MCCLEARY: Okay. Thank you. So, we're not waiving that.

The Exhibits 24 and 25 are relevant to the fact that he's -- he's not preserving information that is relevant to the claims in this lawsuit. And that also is something that is a factor in the colorability of our claims in this case.

THE COURT: How?

MR. MCCLEARY: Well, there is an effort, we believe, underway to not have information available for us to discover. And it reflects that they have been involved in providing -- we think supports -- providing material nonpublic information to other people that would be in his phone. And we want him to preserve it. And we think the fact that he is not is evidence that supports the colorability of our claims.

THE COURT: So, --

MR. MCENTIRE: Your Honor, this --

THE COURT: No. No. I'm processing that. You're wanting the Court to receive into evidence a text that may say something like, I delete messages periodically on my phone, to support your claim that you have a colorable claim that some sort of improper insider disclosure of information and insider trading is going on? He said he had an automatic delete feature on his phone; therefore, he -- that must be evidence of a colorable claim for insider trading. That's the argument?

MR. MCENTIRE: May I add to it, supplement, Your Honor? Mr. Seery, in his deposition, indicated that he did receive a text message that he had recently reviewed from Stonehill in February of 2021. To the extent, however, that is inconsistent with the fact that he has an automatic delete button, suggesting to me that certain text messages have been selectively saved and some other messages have been not selectively saved.

THE COURT: We don't have that motion set today.

MR. MCENTIRE: This is not -- that has nothing to do with the motion. It has to do with the fact that what is being presented to the Court in response, the Respondents' argument, is a selected window, a selected picture, that is -- distorts the reality of what we think has been destroyed

evidence.

Mr. Seery can't save one message that may be helpful to them and not save others that may not be. And it is inconsistent with the notion that this automatic delete button was already in effect, so why does he have one favorable message? That's why it's relevant.

THE COURT: Maybe he stopped using the automatic delete after --

MR. MCENTIRE: No, he didn't at this time, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: That's the relevance.

THE COURT: So, --

MR. MCCLEARY: And he should never have used it, Your Honor, given his role and responsibilities.

THE COURT: We don't have that motion set today. What is the content of these emails? February 16th, March 10th, 2023? What is the content, for me to really zero in --

MR. LEVY: I have --

THE COURT: -- on relevance or not.

MR. LEVY: -- copies of the emails, if that would be helpful --

THE COURT: Okay.

MR. LEVY: -- to Your Honor.

THE COURT: Well, you know, now I'm seeing them, so I

don't know what the big deal is if --

MR. LEVY: As Your Honor can see, these are emails between counsel regarding preservation, which has nothing to do with whether there are colorable claims for fiduciary duties.

I'll add that -- and to show that this has nothing to do with this case and it is an attempt to generate a fishing expedition for documents in an entirely unrelated motion, we had a meet-and-confer where we represented to the counsel bringing that motion that we have been able to recover the text messages from the iCloud.

And so this is really just a sideshow. It has nothing to do with the issues of the colorability of claims for breach of fiduciary duties. It should not be introduced into evidence in this hearing.

THE COURT: All right. I'm going to sustain the objection, but this is without prejudice to you re-urging admission of these messages at the hearing on the motion regarding Mr. Seery's phone. Okay? Now, --

MR. MCCLEARY: That's as to 24 and 25, Your Honor?

THE COURT: Correct. And let's go now to the other one, the Exhibit 76, the *Acis*-related document, the relevance of that. Statement of Interested Party in Response to Motion of NexPoint to Confirm Discharge or Plan Injunction Does Not Bar Suit, or Alternatively, for Relief from All Applicable

Injunctions.

What is the relevance for today's matter?

MR. MCCLEARY: Your Honor, this is background of pleadings and just background information generally to support the allegations made in the case and the background.

THE COURT: What do you mean, background?

MR. MCCLEARY: Kind of the history relative to the claims trading and relative to the claims of the use of insider information.

THE COURT: Okay. Be more specific, because I certainly have a background education on *Acis* litigation.

(Pause.)

MR. MCCLEARY: Yeah. Your Honor, this is a data point that is referred to in one of our experts' data charts, I believe, so --

THE COURT: All right. So let's just carry that to --

MR. MCCLEARY: Yes.

THE COURT: I'm just going to mark it as carried along with 39 through 62, related to the experts.

(HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)

THE COURT: Okay. What about all of these objections that we don't object *per se* but we want it clear that the documents are not being offered for the truth of the matter asserted because there's hearsay?

MR. MCENTIRE: Your Honor, I'll let Mr. McCleary address all of those.

I want to point out one exception, and that is Exhibit #4, which are handwritten notes from Mr. Jim Dondero. Those are not -- they are being offered for the truth of the matter asserted because it's an admission of a party opponent in these proceedings, and that's Farallon. They reflect significant statements and admissions by Farallon, which are not hearsay. It's an exception to the hearsay rule. And they're being offered for more -- they are being offered for the truth of the matter asserted, because -- and it's admissible in that format.

THE COURT: But are you referring to hearsay within hearsay? Because there would be, I guess -- I guess the handwritten notes of Mr. Dondero are his hearsay, and then you're saying there's --

MR. MCENTIRE: So, this is reflecting statements made to Mr. Dondero that are admissions of a party opponent.

MR. LEVY: None of that has been established. These are not notes from anybody at Farallon or Stonehill which could potentially be a party admission. These are notes by Mr. Dondero about what was purportedly said by somebody else, and there's no evidence that these were kept in the regular course of business.

This is hearsay and hearsay within hearsay. And this

could be established in testimony, but it can't be admitted -- the document can't be admitted to speak on behalf of a third person who's not here.

MR. MCENTIRE: Well, first of all, I agree, we'd need to lay a foundation. But that's not the purpose of this discussion right now. I am simply advising the Court that once I lay a foundation, it comes in for all purposes. It comes in as an admission of a party opponent.

MR. LEVY: It is not an admission of a party opponent. It is not notes or statements by any actual defendant. These are notes by Mr. Dondero being introduced for his own benefit. It is not a party admission.

THE COURT: Okay. I'm going to carry that one. If one of the witnesses that's on the witness stand -- well, presumably Mr. Dondero will be called -- we can get context at that time and decide if it's appropriate to let it in and let you cross-examine him on them if that's going to come in. All right? So we'll carry this one.

Anything else, though, unique, or can we consider as a batch all these other objections to -- most of them being pleadings, not all of them but a lot of them -- that the Respondents just want it clear that they're not being offered for the truth of the matter asserted? Your response?

MR. MCCLEARY: They're, again, largely data points relied on by experts in the course of coming up with their

opinions and just setting the background and history of the claims trading.

THE COURT: Well, then which ones are data points? Because I just need to carry those, right? If they're not being offered for any other reason.

MR. MCCLEARY: Well, I would have to -- we would have to refer to the charts of the experts, Your Honor, to determine that on all of them.

MR. MCENTIRE: In order to facilitate this, may I make a suggestion, Your Honor? We'll agree that if we're going to offer anything that he's identified other than for the purposes indicated, we will advise the Court. Otherwise, we'll accept the limitations imposed. And as we go through, if we offer an exhibit that is more than the truth -- if we are offering it for the truth of the matter asserted, we will advise the Court, and then we could take it up then. I'm just trying to get the ball rolling.

THE COURT: Okay. Well, that's still going to be a time-consuming thing, maybe. But, okay. Just, when we start the clock here -- very shortly, I hope -- I want people clear that when you make objections, that counts against your three hours. Okay? All right?

MR. LEVY: Okay. Understood, Your Honor.

MR. MCCLEARY: Your Honor, we have certainly made objection to some of their exhibits.

THE COURT: All right. Well, shall we turn to those now?

MR. MCCLEARY: Yes, Your Honor.

MR. MORRIS: Your Honor, they objected to every single exhibit except one, so let's be clear.

THE COURT: Okay.

MR. MORRIS: If they're withdrawing them, that's fine.

MR. MCCLEARY: Well, --

MR. MORRIS: But let's be clear.

MR. MCCLEARY: -- we are not withdrawing our general objection to all the evidence, of course. Just --

THE COURT: Okay. Let me just say for the record right now, I understand and you are preserving for all purposes your ability to argue on appeal that it was error for the Court to consider any evidence. Okay? You have not waived that argument by --

MR. MCCLEARY: Thank you.

THE COURT: -- now --

MR. MCCLEARY: Thank you. We can have --

THE COURT: -- agreeing to the admission of anybody's exhibit or offering your own exhibits.

MR. MCCLEARY: And we could have a running objection on that basis, on relevance to all the witnesses and the evidence that they offer on that basis. I would request that.

THE COURT: Well, okay, let me be clear. Relevance. Your argument is that no evidence is relevant because the Court doesn't need to consider any evidence --

MR. MCCLEARY: Yes, Your Honor.

THE COURT: -- on the colorability issue. You've got a running objection. It's not destroyed for appeal purposes. Okay?

MR. MCCLEARY: Thank you, Your Honor. Then, subject to that, in terms --

MR. MORRIS: I'm sorry to interrupt, but --

MR. MCCLEARY: Sure.

MR. MORRIS: -- would it be helpful if I gave the Court my list so she can see --

MR. MCCLEARY: Sure.

MR. MORRIS: -- what the --

MR. MCCLEARY: Sure.

MR. MORRIS: Okay. May I approach, Your Honor?

THE COURT: You may. I'm not sure, if everything has been objected to, I'm not sure how --

MR. MORRIS: Because I've tried -- I've tried to organize it in a way that would be helpful.

THE COURT: Okay.

(Pause.)

MR. MCCLEARY: Okay. Your --

THE COURT: I'm ready.

MR. MCCLEARY: -- Honor, yes.

THE COURT: Uh-huh.

MR. MCCLEARY: So, we are withdrawing our objections, other than the general objections to relevance based on the evidentiary nature of the proceeding, to Exhibits 1 and 2.

With respect to 3, this is a verified petition to take deposition for suit and seek documents filed on July 22, 2021. We object on the grounds of relevance and hearsay to that. Is that --

THE COURT: Well, --

MR. MORRIS: I don't -- I don't understand this one.

THE COURT: This --

MR. MCCLEARY: Is that, I'm sorry, is that your #11?

MR. MORRIS: Yeah.

MR. MCCLEARY: All right. We withdraw our objection to #3, subject to our general objection.

On Exhibit 4, we object to relevance and hearsay on a verified amended petition to take deposition before suit and seek documents.

THE COURT: Okay. This is my time to hear your argument. And we're going to be here --

MR. MORRIS: Can I -- can I do this here? It's going to be much quicker.

THE COURT: What do you mean? Do what here?

MR. MORRIS: So, if you just follow the chart that I

gave the Court, --

THE COURT: Uh-huh.

MR. MORRIS: -- Section A is a list of exhibits that they've objected to. Those exhibits are in the right-hand column.

At the same time, they are offering the exact same exhibits into evidence on their exhibit list. I don't understand how they can offer their exhibits and object to ours.

MR. MCCLEARY: Counsel. I'm sorry. We've already told them that, subject to our general objection, we'll withdraw the objections to those exhibits.

MR. MORRIS: Right. So can we agree that all objections to Section A are withdrawn?

MR. MCCLEARY: Subject to the general objection, yes.

MR. MORRIS: Thank you.

THE COURT: Okay. So, --

MR. MORRIS: That's going to be much quicker.

THE COURT: -- 11, 34, 2, 46, 42, 38, 41, 39, 40, and various attachments to Highland Exhibits 5 are withdrawn. So, admitted by stipulation.

(Debtors' Exhibits 2, 11, 34, 38, 39, 40, 41, 42, 46 are received into evidence. Certain attachments to Debtors' Exhibit 5 are received into evidence.)

MR. MORRIS: And to make this easy, Your Honor, at

some point I hope later today, but perhaps tomorrow, we'll slap a caption on this, we'll file it on the docket, so that, you know, an appellate court, if necessary, can follow along. But I think that we've just stipulated that all of the exhibits identified in Section A of this document are -- the objections have been withdrawn.

THE COURT: Okay.

MR. MCCLEARY: Subject to the general objections.

MR. MORRIS: Right. That gets us -- I'm going to jump to Section C, because I think the same is true. Section C identifies all exhibits that each party has taken from the docket. And you can see from Footnote 4, the Court can take judicial notice under Federal Rule of Evidence 201, we've just had the discussion about whether or not any of them would be limited for purposes of the truth of the matter asserted, but all of the exhibits identified in Section C I think the Court can take judicial notice of because they're on a docket.

THE COURT: Response?

MR. MORRIS: And so I would respectfully request that they withdraw their objections to anything in Section C.

THE COURT: Response, Mr. McCleary?

MR. MCCLEARY: I understand the Court can take judicial notice of those, Your Honor, but they do contain irrelevant and hearsay information also.

MR. MORRIS: The hearsay, I think that we just had

the discussion. I mean, if there's something that he wants to really point out at this point that I can respond to. But we would agree that advocacy pieces shouldn't be offered for the truth of the matter asserted. Court orders, on the other hand, are law of the case.

THE COURT: So, I mean, it's the very same situation we just addressed with your own exhibits. You have a lot of court filings. And they didn't have a problem with it, as long as everyone knew advocacy was not being accepted for the truth of the matter asserted.

MR. MCCLEARY: Well, --

THE COURT: Isn't this the same thing?

MR. MCCLEARY: -- they're not offering it for the truth of the matter asserted. That's one thing. And certainly the Court can take judicial notice. We do object to the extent they're offering Exhibits 6 through 10 for the truth of the matter asserted.

MR. MORRIS: Well, let me check those.

THE COURT: Well, --

MR. MCCLEARY: I'm sorry. 6, 7, uh -- (pause).

THE COURT: Those are orders of --

MR. MORRIS: Yeah.

THE COURT: -- courts.

MR. MORRIS: Yeah. They're orders of the Court.

MR. MCCLEARY: The orders are not relevant, Your

Honor.

THE COURT: Explain.

MR. MCCLEARY: Well, they have not demonstrated that the orders that they seek to introduce are relevant. They have orders regarding, for example, the contempt proceedings that are irrelevant to these proceedings. And prejudicial under 403.

THE COURT: All right. Shall I take a five- or ten-minute break? Let me -- I think I've been very generous by not starting the clock yet on the three hours/three hours.

MR. MCCLEARY: Appreciate that.

THE COURT: But here's how we do things in bankruptcy court. And I don't mean to talk down to anyone. I don't know, you may appear in bankruptcy court every day of your life. But we expect counsel to get together ahead of time and stipulate to the admissibility of as many exhibits as you can. If there's a preservation of rights here and there, fine. But we --

MR. MCCLEARY: Maybe if we take --

THE COURT: You know, --

MR. MCCLEARY: We can try to --

THE COURT: -- helping everyone to understand, --

MR. MCCLEARY: Sure.

THE COURT: -- we have thousands of cases in our court.

MR. MCCLEARY: Sure.

THE COURT: And this is just something we have to do to give all parties their day in court when they need time. And so --

MR. MCCLEARY: If you'd like us to take ten minutes and try to narrow this, we certainly --

THE COURT: Okay. With everybody understanding you should have taken the ten minutes before we got here. But, again, when I say three hours, --

MR. MORRIS: Yeah.

THE COURT: -- that's what I meant. Okay?

MR. MCCLEARY: Yes, Your Honor.

THE COURT: So we'll take a ten-minute break.

THE CLERK: All rise.

(A recess ensued from 10:42 a.m. until 10:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Have we reached agreements on some of these exhibits?

MR. MCCLEARY: Your Honor, we have agreed on the ones that we can agree on, and we announced that to the Court with respect to the Paragraph A items that the Court's already ruled on.

I would like to point out to the Court that we just got their objections handed to us right before the hearing. We filed ours last night. So we didn't --

THE COURT: At 11:00-something, right?

MR. MCCLEARY: Yes, Your Honor, but we did --

THE COURT: Okay. Well, okay. So I guess your point is you want to make sure I'm annoyed with everyone, not just selective of you.

MR. MCCLEARY: Well, --

THE COURT: I mean, exhibit lists were filed Monday. So I don't know why on Tuesday people were not on the phone saying, you know, or Wednesday morning at the latest.

MR. MCCLEARY: Sure. And we haven't had much of an opportunity, in fairness, to consider their objections and respond because we just received them right at the time of the hearing, just before the hearing started.

Your Honor, we would urge our objections to Exhibit #4. We've objected to this petition to take deposition before suit and seek documents on the basis of relevance and hearsay. They have a number of pleadings in other matters that have nothing to do with, frankly, the colorability standard in this case. And this is an example.

THE COURT: Okay. This is the time for me to hear specific objections and what the basis is, and not just --

MR. MORRIS: Can we go back --

THE COURT: -- a category.

MR. MCCLEARY: Yeah.

MR. MORRIS: Can we go back to my way? Because it's

just going to be much faster. It really will be. Right? We -- Category 1, A and C, we dealt with. Category B, --

THE COURT: Well, we dealt with A.

MR. MORRIS: Right. And --

THE COURT: All of those are withdrawn, and they are admitted by stipulation.

MR. MORRIS: Right.

MR. MCCLEARY: Subject to --

THE COURT: Category C, --

MR. MCCLEARY: -- the general objections.

THE COURT: -- I'm not sure we're to closure on.

MR. MORRIS: Um, --

THE COURT: Are we to closure on C? Are you stipulating?

MR. MCCLEARY: No. We are not stipulating on C.

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: I have not had an opportunity to -- to --

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: Have not had an opportunity to look at each and every one of these, Your Honor. Because we did just get these.

THE COURT: Okay.

MR. MCCLEARY: But generally --

THE COURT: If we have not wrapped this up in 15

minutes, we're just going to start, and you can object the old-fashioned way. But I'm telling all lawyers here, objections count against your time. Okay?

MR. MORRIS: And I'd move for the admission of all of our exhibits right now, then.

THE COURT: Okay.

MR. MORRIS: So let him -- let -- put him on the clock and let's go.

THE COURT: Okay. So, 15 minutes. Let start going through everything except Category A.

MR. MORRIS: Number 4?

MR. MCCLEARY: Number 4, Your Honor, we object on the basis of relevance and hearsay.

MR. MORRIS: Okay. My response to that, Your Honor, and this will be my response -- this is in Section B of my outline --

THE COURT: Uh-huh.

MR. MORRIS: Okay? They object to Exhibits 3, 4, 5, and 9. These are Mr. Dondero's prior sworn statements. You just heard his lawyer stand here and tell the Court that somehow his handwritten notes should be admissible as an admission. You know what he did? He testified four different times under oath. That's Exhibits 3, 4, 5, and 9. Sworn statements.

They come into evidence not as hearsay but under Federal

Rule of Evidence 801(d)(1). It's beyond -- the notion that they can prove a colorable claim and that it's not relevant that he's got diametrically different -- he's got four different statements, now five with his notes, he's got five different statements. Doesn't that go to the colorability of these claims?

We believe it does. That's the basis for the introduction of these documents into evidence.

THE COURT: Okay. Mr. McCleary, your response?

MR. MCCLEARY: Well, it's a verified amended petition, Your Honor, in another matter, to -- before suit to seek documents. Has nothing to do with the merits of this case and our motion for leave. So we object on the grounds of relevance and hearsay.

THE COURT: Well, since they're prior sworn statements of Mr. Dondero, --

MR. MCCLEARY: Well, then they might -- if they want to use it later to impeach, they can try to do that, but they have to lay the foundation.

THE COURT: What about 801(d)(1)?

MR. MCCLEARY: Again, relevance, Your Honor.

THE COURT: Okay. I overrule. Those are --

MR. MCCLEARY: And Mr. --

MR. MORRIS: Okay.

THE COURT: Those are going to be admitted.

MR. MCCLEARY: By the way, on hearsay, Mr. Dondero is not Hunter Mountain. So when he argues that these are admissions, they're not admissions by Hunter Mountain.

MR. MORRIS: Your Honor, the only piece of evidence, literally the only piece of evidence they have are the words out of Mr. Dondero's mouth. There is no evidence, there will be no evidence of a *quid*, a *pro*, or a *quo*. There will be no evidence other than what Mr. Dondero testifies to --

MR. MCCLEARY: Well, --

MR. MORRIS: -- about what he was told. There will be no evidence that there was a meaningful relationship between Mr. Seery and Ms. -- and Farallon and Stonehill. There will be no evidence, none, that Farallon and Stonehill rubber-stamped Mr. Seery's compensation package. Nothing. The only thing we have are going to be the words out of Mr. Dondero's mouth and these notes that just showed up. And these statements --

MR. MCCLEARY: Your Honor?

THE COURT: Okay. Counsel, I mean, it just feels like --

MR. MORRIS: It's --

THE COURT: -- if notes get in, then sworn statements of Mr. Dondero should get in. Right?

MR. MCCLEARY: Your Honor, he's making arguments, closing arguments, opening arguments, trying to run out the

clock. We objected to relevance, and we stand on our objection.

THE COURT: Okay.

MR. MCCLEARY: And on hearsay.

THE COURT: I'll admit 3, 4, 5, and 9.

(Debtors' Exhibits 3, 4, 5, and 9 are received into evidence.)

MR. MORRIS: Section E.

MR. MCCLEARY: I'm sorry. So our objections are overruled?

THE COURT: They are overruled.

MR. MCCLEARY: On 3, 4, 5?

THE COURT: And 9.

MR. MORRIS: Section E of my outline.

MR. MCCLEARY: What about 6?

THE COURT: That's not --

MR. MORRIS: Well, --

THE COURT: Well, I don't --

MR. MORRIS: -- it would -- it would --

THE COURT: Let's go back to C. I'm not clear if we're to closure on Section C.

MR. MORRIS: I'll let Counsel go through --

THE COURT: And 6 is within Section C.

MR. MORRIS: I'll let Counsel go through each one, one at a time.

MR. MCCLEARY: No. That's all right. If you want to go through, you have them lumped in. Yeah, I think it'd probably be quickest if, frankly, we just go down the list, Your Honor. Frankly.

THE COURT: Well, you've got ten minutes left.

MR. MCCLEARY: Okay. We object to #6, memorandum and opinion order granting Dondero's motion to remand, on the basis of relevance and hearsay.

THE COURT: Overruled. I can take judicial notice under 201 of that. So 6 is admitted.

(Debtors' Exhibit 6 is received into evidence.)

MR. MCCLEARY: We object to Exhibits 7 and 8 on the grounds of relevance. 7 on relevance and hearsay, and 8 on relevance.

MR. MORRIS: I'll take 7 first, Your Honor.

THE COURT: Okay.

MR. MORRIS: It's an order dismissing Mr. Dondero's 202 petition. That 202 petition sought discovery on the basis of the exact same so-called insider trading claims that Hunter Mountain is asserting today.

I think it's not only relevant, it's almost dispositive that a Texas state court heard the exact same -- or, actually, not the exact same, because Mr. Dondero changed his story so many times -- but heard a version, I think Versions 1, 2, and 3, of this insider trading and would not even give them

discovery.

So when the Court considers whether or not there's a colorable claim here, I think it ought to think about what a Texas state court decided on not whether or not they have colorable claims, whether or not they're even entitled to discovery. I think it's very relevant. Move for its admission right now.

MR. MCCLEARY: Your Honor, it's ironic, because at that hearing counsel for the Respondents was arguing that it ought to be this Court that considers what discovery is appropriate.

THE COURT: Okay. Well, obviously, you can argue about that, but, again, I think I can take judicial notice of this. Right?

MR. MCCLEARY: Well, we argue that it's not relevant, Your Honor, and it is the --

THE COURT: Okay.

MR. MCCLEARY: 7 is not relevant and is hearsay.

THE COURT: Okay.

MR. MORRIS: Number 8, --

THE COURT: Objection is overruled.

MR. MCCLEARY: Overruled?

THE COURT: And so 7 is admitted.

(Debtors' Exhibit 7 is received into evidence.)

MR. MCCLEARY: 8 is our verified petition. And we

object on the grounds of relevance.

MR. MORRIS: You know, Your Honor, if I really had the time and the patience to do this, I think I'd find this document attached to Mr. McEntire's affidavit that's on their exhibit list.

But to speed this up just a little bit, how could their 202 petition that sought discovery on the basis of the very same insider trading allegation not be relevant? It's a judicial order. You can take notice of it. And it's incredibly relevant that a second Texas state court heard the same allegations that they're presenting to you as colorable and said no, you're not getting discovery.

MR. MCCLEARY: We don't know why they made that order, Your Honor. They could have simply accepted the opposition's arguments that this Court had jurisdiction and should consider what discovery ought to be done.

THE COURT: Overruled.

MR. MCCLEARY: It's not relevant to our --

THE COURT: I admit 8.

MR. MORRIS: Next?

MR. MCCLEARY: Overruled?

THE COURT: Yes.

(Debtors' Exhibit 8 is received into evidence.)

MR. MCCLEARY: The declaration of James Dondero. I think we withdrew the Dondero --

THE COURT: Right.

MR. MCCLEARY: -- declarations. If it --

THE COURT: It's --

MR. MCCLEARY: Numbered -- I'm sorry, #9.

THE COURT: 9. I've already checked it as admitted.

MR. MCCLEARY: If you want to -- if you want to offer #9, they can offer it.

THE COURT: It's admitted. I've already --

MR. MCCLEARY: Okay.

THE COURT: -- said.

MR. MCCLEARY: Number 10. It's an order denying our second Rule 202 petition. And we object to it on relevance, Your Honor.

THE COURT: Same objection. It's overruled. It's admitted.

(Debtors' Exhibit 10 is received into evidence.)

MR. MCCLEARY: Number 12, 13, and -- 12 and 13 are correspondence regarding resignation letters. We object on grounds of relevance.

THE COURT: Wait. Did we skip 11 for a reason?

MR. MCCLEARY: Pardon me?

THE COURT: Did we skip 11 for a reason?

MR. MCCLEARY: We only have it --

THE COURT: Oh, wait. It's already admitted by stipulation.

MR. MCCLEARY: Yeah, and we have --

MR. MORRIS: That's the one --

MR. MCCLEARY: We have our general objection.

MR. MORRIS: That's the one exhibit that they didn't object to.

THE COURT: Okay.

MR. MCCLEARY: We only had our general objection with respect to that.

THE COURT: Okay. Thank you. Thank you.

MR. MCCLEARY: On 12 --

THE COURT: Uh-huh.

MR. MCCLEARY: -- and 13, those are correspondence regarding resignations. We object on the grounds of relevance.

MR. MORRIS: So, the relevance of that, Your Honor, is to show that when Mr. Dondero sent this email to Mr. Seery in December 2020, he had absolutely no relationship to Highland, had absolutely no duty to Highland, had absolutely no reason to send this email to Highland. He wasn't in control of Highland. He wasn't --

If they'll stipulate to this, that's fine. He wasn't in control. He had no authority to do anything. He couldn't effectuate trades. He wasn't there. And that's what these documents are intended to prove.

THE COURT: Okay. Why are we -- this is --

MR. MCCLEARY: Because there are --
THE COURT: Some of this stuff, I mean, --
MR. MCCLEARY: There are other agreements.
THE COURT: -- is no big deal. Right?
MR. MCCLEARY: Sub-advisory agreements, other agreements that he had under which he had a responsibility to make the communications regarding material nonpublic information that he made. So this is simply irrelevant, Your Honor.
THE COURT: I overrule. I mean, again, I don't --
MR. MCCLEARY: Okay.
(Debtors' Exhibits 12 and 13 are received into evidence.)
MR. MCCLEARY: Number 14, --
THE COURT: You're both giving me just a lot of background that I already have, but of course a Court of Appeals --
MR. MORRIS: That's why we --
THE COURT: -- isn't going to have it.
MR. MORRIS: Yep.
MR. MCCLEARY: Well, #14, Exhibit 14, we object on the grounds of relevance and hearsay.
THE COURT: Okay. Wait a minute. We skipped 13 because -- why? Oh, wait, that was, I'm sorry, 12 and 13 --
MR. MORRIS: Yes.
THE COURT: -- where I've overruled the objection and

admitted.

Okay. Go ahead.

MR. MCCLEARY: 14, we object on the grounds of relevance and hearsay, Your Honor.

MR. MORRIS: I'm just going to make this real quick, Your Honor. Here's the thing. This Court knows it. It's actually facts that cannot be disputed because they're subject of court orders.

As the Court will recall, beginning in late November 2020 continuing through late December 2020, Mr. Dondero was engaged in a continuous pattern of interference with Highland's business and trading. It was the subject of the TRO, which is why the TRO is relevant.

Your Honor will recall that at the end of November Mr. Dondero attempted to stop Mr. Seery from trading in Avaya stock. On December 3rd is when he sent this threatening email, text message, to Mr. Dondero [sic]. It caused us to get the TRO.

Your Honor will recall on December 16, 2020, that's when we had the hearing on Mr. Dondero's motion to try to stop Mr. Seery from trading in the CLOs that the Court dismissed as frivolous and granted the directed verdict of Highland.

So, that's December 16. He sends this email about MGM on December 17th. And what happens on December 18th? More interference with Highland's business. It's a matter of --

beyond dispute. It's law of the case at this point because that's the subject of the contempt order. And the Court found that, after -- after hours, on December 18th, Hunter Covitz told Mr. Dondero that Mr. Seery was again trying to trade in Avaya stock, and within a day or two Mr. Dondero was again interfering it, and that's what led to the second -- to the first contempt order.

So all of these documents are relevant to show motive and what was happening. This email was not sent for any legitimate purpose. The evidence is just overwhelming. And it's not -- it's not like, oh, that's an argument we're making. Between the TRO and the contempt order, it's law of the case. He was interfering with Highland's business nonstop for thirty days, including the day before he sent this email and the day after he sent the email.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, this is a lawsuit or an effort to file a lawsuit on behalf of Hunter Mountain Investment Trust, not James Dondero. And as much as Counsel wants to make this about Jim Dondero and attack him, this is a different case. So this exhibit has nothing to do with the claims in this lawsuit. It's not relevant. And hearsay.

MR. MORRIS: The only evidence is Mr. Dondero. It's -- could not be more relevant.

THE COURT: Okay. I overrule. I'm admitting this.

And so we're --

MR. MCCLEARY: Uh, --

THE COURT: It's 14. It's -- how far?

MR. MCCLEARY: 14. Exhibit 15 is where we are, Your Honor.

THE COURT: Okay.

(Debtors' Exhibit 14 is received into evidence.)

THE COURT: 15.

MR. MORRIS: Oh, that's -- that's the contempt order. And so these contain the judicial findings that are now beyond dispute that Mr. Dondero was engaged in interfering with Highland's business after the TRO was entered on December 10th.

THE COURT: Okay. Again, my own orders, --

MR. MCCLEARY: Your Honor, it's not --

THE COURT: -- I can take judicial notice of --

MR. MCCLEARY: It's --

THE COURT: -- under the Federal Rules of Evidence.

MR. MCCLEARY: It's --

THE COURT: 201.

MR. MCCLEARY: We simply object as not relevant. We object based on Federal Rule of Evidence 403. Any possible relevance is outweighed by the prejudice. And we object on the grounds of hearsay, Your Honor.

THE COURT: Prejudice? Prejudice? They're orders I

issued. I'm going to be prejudiced by my own orders?

MR. MCCLEARY: Uh, well, --

THE COURT: I don't --

MR. MCCLEARY: -- Hunter Mountain will be.

THE COURT: Okay. I'll overrule.

(Debtors' Exhibit 15 is received into evidence.)

THE COURT: I'll tell you what. We're out of our -- well, we've get probably 30 seconds left. Anything that we can maybe knock out to not have eat into your three hours? Both of you?

MR. MCCLEARY: Your Honor, we filed written objections to all of these exhibits. We urge those objections. 16.

THE COURT: I know, but this is your chance to argue why your objections have merit. I can -- we can just --

MR. MCCLEARY: Because, well, obviously, we're talking about pleadings and filings in other matters. The evidence that they're trying to use to impugn Jim Dondero, which has nothing to do with the merits of HMIT's claims and allegations of insider trades.

THE COURT: Okay. A lot of this is articles. Articles, articles, articles about MGM.

MR. MCCLEARY: On the articles, Your Honor, subject to our general objection, we'll withdraw the objections to the articles if they'll agree to the articles that we've offered.

MR. MORRIS: Your Honor, we didn't lodge an objection to their articles.

MR. MCCLEARY: Okay.

MR. MORRIS: And just so, if anybody is keeping track at home, this is Item B on the list that I created earlier this morning.

THE COURT: Okay. So, 25 through 30 are articles. Those are admitted by stipulation. Nothing is about the truth of the matter asserted. They're just articles that were out there for --

MR. MORRIS: Right. I would just --

MR. MCCLEARY: Yes.

THE COURT: -- the world.

MR. MORRIS: Just so we're clear, it's Exhibits 25, 6 -- 25, 26, 27, 28, 29, and 30.

THE COURT: Right.

(Debtors' Exhibits 25 through 30 are received into evidence.)

MR. MORRIS: And so, yes, those are all articles. They have their articles. Exhibit 72.

THE COURT: Oh, and 34 is another one. So that's admitted as well.

MR. MORRIS: Yes.

MR. MCCLEARY: Yes, Your Honor.

(Debtors' Exhibit 34 is received into evidence.)

THE COURT: Okay. Well, we're out of time, so as for the others, they can offer them the old-fashioned way if they want to, you can object the old-fashioned way, and it eats into both of your three hours.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: Okay. Let's hear opening statements. And by the way, before we wrap up today, I'm going to say out loud everything I've admitted so we're all crystal clear on what's in the record. This has been a bit chaotic.

MR. MCCLEARY: Okay. Understood.

THE COURT: So, Caroline is going to be the keeper of our time over here. And if the judge ever interrupts you, she's going to stop the timer. Okay?

MR. MCENTIRE: Thank you.

THE COURT: I hope I won't any more, but you may proceed.

MR. MCENTIRE: No, I appreciate it. Thank you. Can you see it, Your Honor?

THE COURT: I can, yes. Thanks.

MR. MCENTIRE: Can opposing counsel see it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: All right.

THE COURT: And I'm just going to ask everyone who has a PowerPoint today, can I get a hard copy --

MR. MCENTIRE: Certainly.

THE COURT: -- before we close?

MR. MCENTIRE: Certainly.

THE COURT: Okay. Thank you.

OPENING STATEMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: May it please the Court, Your Honor, at this time I'll be providing the opening statement on behalf of Hunter Mountain Investment Trust. It is a Delaware trust. Mark Patrick, who's in the courtroom, is the Administrator. He will be one of the witnesses that you'll hear today.

Hunter Mountain Investment Trust is the former 99.5 percent equity holder, currently classified as a Class 10 contingent beneficiary under the Claimant Trust Agreement. It is active in supporting various entities that in turn support charities throughout North Texas.

Your Honor, this is not an ordinary claims-trading case. I know the Court made those references in one of the hearings, and I wanted to more clearly respond. This has different indicia. An ordinary claims-trading case is normally outside the purview of the bankruptcy court. What makes this different is that we're involving, we believe and allege, breaches of fiduciary duty of the Debtor-in-Possession's CEO and the Trustee.

It involves also aiding and abetting by the entities that actually acquired the claims. And that falls into the

category of willful misconduct.

It also involves injury to the Reorganized Debtor and to the Claimant Trust. Ordinarily, a claims trade would not involve injury to the estate or the reorganized debtor. Here, we have alleged that it has. And the injury takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.

During the course of my presentation today, I'll be referring to the Claims Purchasers as the collective of Farallon, Stonehill, Muck, and Jessup.

I would like to briefly discuss some of the issues that have already been presented to the Court, just to make sure that this record is clear.

Can you please continue?

We don't believe the *Barton* Doctrine is applicable. I believe that precedent is very clear that the *Barton* Doctrine deals with proceedings in other courts, and the various standards and requirements of *Barton* do not apply if in fact we're coming to the Court and filing the proceeding in the court where the Trustee was actually appointed.

And so I think that the law is clear. And this is Judge Houser here in the Northern District of Texas in the case *In re Provider Meds*. And she makes very clear that the standard for granting leave to sue here is actually less stringent than

a 12(b)(6) plausibility standard. So if there is any issue as to what standard this Court should be applying to the -- to this process, we believe it's a 12(b)(6) standard, confined to the four corners of the document.

If the Court wishes to consult the documents that are referred to in the four corners of the petition or complaint, it may do so.

But the standard here is even more flexible than a standard plausibility. Our evidence, though, achieves the standard of plausibility as well.

The *In re Deepwater Horizon* case is another important case. That's a Fifth Circuit case. A plaintiff's claim is colorable if it can allege standing and the elements necessary to state a claim on which relief could be granted. Defining a colorable claim as one with some possible validity. I don't have to prove my case today. I didn't have to prove my case in the prior hearings. I have to prove sufficient allegations, not evidence, but sufficient allegations to show that it has some possible basis of validity.

Possible basis of validity. We're not here talking about likelihoods. We're not here talking about *prima facie* evidence. We're not here talking about probabilities. We're talking about something less than plausibility. But, again, we achieve plausibility.

A colorable claim is defined as one which is plausible or

not without merit. These are various cases from around the country. The colorable claim requirement is met if a committee has asserted claims for relief that, on appropriate proof, would allow recovery. On appropriate proof. We're not required to put on that proof today, Your Honor.

Courts have determined that a court need not conduct an evidentiary hearing, but must ensure that the claims do not lack any merit whatsoever. We submit that our claims have substantial merit and deserve the opportunity to initiate our proceedings, have an opportunity to conduct discovery. And if they want to file a 12(b)(6) motion before this judge, before you, they can do so. If they want to file a motion for summary judgment, they can do so. But at this juncture, they cannot, and at this juncture this Court should not consider evidence in making its determination.

Standing under Delaware law. The Funds have collectively really hit the standing issue hard. I think it's easily resolved. First of all, it's clear that a beneficial owner has standing to bring a derivative action. Under Delaware law, a beneficial owner has a right to bring a derivative action on behalf of the -- against the trustee.

So the issue is, am I a beneficial owner? As a contingent beneficiary in Class 10, and that's the Court's inquiry here, do I qualify as a beneficial owner? And I think that Delaware law is clear that, by not limiting it to only vested

interests, by not limiting it only to immediate beneficiaries, they are not -- they are not extending the scope of the statute to contingent beneficiaries. And this is consistent with the laws around the country, because even Texas recognizes that an unvested contingent beneficiary has a property right to protect.

Even Mr. Seery admitted in his deposition that a unvested contingent interest is in the nature of a property right. If you have a property right, that property right can be abused. If you have a property right, that property right, whether it's inchoate or not, it can be abused, it can be misappropriated, and you could become aggrieved. And that is the constitutional standard for standing: Is Hunter Mountain Investment Trust aggrieved? And the answer is yes.

Contingent beneficiaries from around the country, in addition to Mr. Seery's admission that we have a property interest, contingent beneficiary has standing. This is the *Smith v. Clearwater* case on Slide 11. Very clearly, they say that even if it's subject to a future event. Their argument is that Mr. Seery has not certified Hunter Mountain as in the money. We believe we are in the money. That's a different issue. We believe he should certify, in the discharge of his duties. That's a different issue.

But even assuming his case -- his argument for a moment, their argument is that since he's not done that act, which we

also challenge and criticize that he's not done that act, that we can't qualify to bring this case. Well, that's not what the law is, that even an unvested interest, a contingent interest, has a right.

Slide 12. This is the State of Illinois. Despite the fact that interest is contingent and may not vest in possession, you still have a right to protect what you have. And you have standing to bring a cause of action.

The Claimant Trust Agreement, by the way, suggests that we have no vested interest, and they'll likely argue that point. But the point there is the law says that's irrelevant. If it's an inchoate interest, if it's potentially vested in the future, that's what imbues you with standing.

And in any event, the Claimant Trust Agreement is subject to Delaware trust law, and they can't get around that. They can say whatever they want to say in the agreement to try to block us from participation, but it's still subject to Delaware trust law, and Delaware trust law does not draw a distinction between vested or unvested.

The State of Missouri: There is no dispute in this case that the future -- that future beneficiaries have standing to bring an accounting action, whether they're vested or contingent. The *Bucksbaum* case. Article III standing exists, constitutional standing, including discretionary beneficiaries, have long been permitted to bring suits to

redress trustees' breaches of trust. This applies not only to our standing as an individual plaintiff, which we've brought, but also in our standing -- in our capacity seeking to bring a derivative action to benefit the Claimant Trust of the Reorganized Debtor. Both are permitted under this law under these cases.

An interest -- in the *Mayfield* case, an interest is any interest, whether legal or equitable or both, vested, contingent, defeasible, or indefeasible. So the unilateral self-serving wording of the Claimant Trust does not abrogate our right to bring the claim.

I'd like to talk briefly about fiduciary duties. We know that Mr. Seery has fiduciary duties to the estate when he was the CEO prior to the effective date. We allege that he breached those fiduciary duties, and that gives us standing to bring the claim that we have brought for breaching fiduciary duties, causing damages that are accruing post-effective date.

In the *Xtreme Power* case, again, the directors can either appear on both sides of the transaction or expect to derive any personal financial benefit. We are alleging that Mr. Seery engaged in self-dealing. We allege that he engaged in self-dealing by arriving at an understanding where he could put business allies -- whether you call them friends, business allies, close acquaintances -- on the committee, the Oversight Board that would ultimately oversee his compensation, which,

in the context of this case, makes no sense and it is excessive.

Muck is a specially -- special-purpose entity of Farallon. Farallon acquired the claims, created Muck to do the job. Muck is now on the Oversight Board.

Jessup. Jessup is a special-purpose entity, a shell created by Stonehill. Stonehill bought the claims, funneled the money through Jessup. Jessup is now on the Oversight Board. Jessup and Muck -- and by the way, the principals in Farallon are actually the representatives from Muck on the Oversight Board. So there's no suggestion that there's really a distinct corporate relationship here.

Michael Linn, who is a principal at Farallon. You'll hear his name today, throughout today. He actually is a representative of the Oversight Board, dealing with Mr. Seery and negotiating Mr. -- I put negotiation in quotes -- negotiating Mr. Seery's compensation.

I'd like to talk very briefly about background. We took Mr. Seery's deposition. I was unaware of this. I now know it. Perhaps the Court was already aware of it. This is Mr. Seery's first job as a CEO of any debtor. This is the first time Mr. Seery has ever been a chief restructuring officer. This is the first time Mr. Seery has ever been the CEO of a reorganized debtor. This is the first time that he's served as a trustee post-effective date. However, his compensation

is excessive and not market-driven, and there's a reason for that. We believe and we allege that it's a *quid pro quo* because of prior relationships with Farallon and Stonehill.

Farallon and Stonehill are hedge funds, Your Honor. They created their special-purpose entities on the eve of this transaction simply to take the title to the claims, but the money is going upstream.

Seery has a relationship with Farallon. Do we know the full extent of that relationship? No. We have been deprived of discovery. We attempted to get the discovery in the state court 202 process. We were denied for reasons not articulated in the court's order.

We attempted to get the discovery here that the Court refused under the last hearing about these relationships.

So what we do have begins to put the pieces of the puzzle together. And sufficient is more than plausible. It is more than colorable.

We know that Mr. Seery went on a meet-and-greet trip to Farallon's offices in 2017. Didn't have to. He was trying to cultivate a business relationship. Farallon was important to him.

We know that in 2019 he was no longer with Guggenheim Securities. He goes out to Farallon's offices for another meet-and-greet and he specifically meets with the two principals who are reflected in Mr. Dondero's notes, Raj Patel

and Michael Linn.

We know that in June 2020 Farallon emailed Seery. This is after Mr. Seery becomes the CEO. He says, "Congratulations. We're monitoring what you're doing."

Seery's relationship with Stonehill. These are all -- this is all before what we believe to be the events that are at issue in this case. We believe that -- represented Stonehill in the *Blockbuster* bankruptcy proceeding. There was an objection to a document. Mr. Seery was involved in the *Blockbuster* proceedings. Stonehill was one of his many clients on the committee that he represented.

We know that Stonehill is actively involved in one of Mr. Seery's charities in New York. We know that he sent text messages to Mr. Seery in February of 2021, wanting to know how to get involved in this bankruptcy.

Farallon and Stonehill were strangers to this bankruptcy. They weren't creditors. They were encouraged and they came into this process.

Farallon and Stonehill have not denied any of our allegations. They are not putting any evidence on today. We allege that these relationships was based and founded upon a *quid pro quo*. I'll scratch your back; you scratch mine. You give me some information; I want to evaluate these claims. And, by the way, we're going to be on the Oversight Board, or you're going to put us on the Oversight Board, or by default

we'll be on the Oversight Board, and we'll work out your compensation agreement.

Mr. Seery also has an established relationship with Stonehill.

I like to have a timeline of certain events. This is not all of the relevant events, but this can give you a quick picture. We know that Mr. Dondero sent an email to Mr. Seery in December of 2020 relating to MGM. It is undisputed that Mr. -- that Farallon emailed Seery, Mr. Seery, in January of 2021 if there was a path to get information regarding the claims for sales. Mr. Seery says he never responded to it, but we know that this entity, Farallon, got deeply involved in buying these claims shortly after this email.

We have the Claimant Trust Agreement suddenly being amended to not have a base fee, but now we're going to incorporate a success participation fee. As part of a plan, we're not criticizing that, but suddenly the vehicle for post-effective date bonuses is being created.

The Debtors' analysis comes out in association with the plan confirmation. It projects a 71.32 percent recovery for Class 8 and Class 9, and those are the principal classes we're talking about. 95 percent -- 98 percent of all of the claims here are in Class 8 and Class 9, until you get to us, Class 10.

71.32 percent of Class 8 means that Farallon and Stonehill

will get less than about a six percent internal rate return on their $163 million investment, which they have never denied. That is not a hedge fund investment goal. Investment -- hedge funds like these companies, they go for 38, 40, 50 percent of returns. Who would ever invest $163 million on a distressed asset that's not collateralized with only an expectation of an internal rate of turn of six percent? But that's going to be the evidence before the Court. That does not make any financial, rational wisdom at all.

The plan is confirmed. It's undisputed that Stonehill contacts Seery after the plan is confirmed to want to know how to get involved. They have phone calls after this text message. Muck is created on March 9. We know from Mr. Seery's deposition that Farallon told Seery that six days later they bought the claims. All the claims, by the way, when I say bought the claims, it's everything except UBS. To our knowledge. They may have negotiated the paperwork back then, but the claims transfers did not occur until the summer. All the other claims involved, the claims transfers were filed with this Court in mid-April and at the end of April.

Tim Cournoyer removes MGM from the restricted list. Tim Cournoyer is an employee of Highland. Well, it tells us that MGM was on the restricted list and there should be no discussion about MGM, but there was. There was discussions about MGM, and Mr. Dondero is going to testify to that.

And we also know that the HarbourVest settlement was consummated during this period of time. If it had been on the restricted list, as it was, that transaction should never have occurred. But it did occur. This Court ordered it. It approved it. And I'm not challenging -- we're not challenging that settlement. It is done. That is done. What we are challenging is the fact that Mr. Seery is actively involved in using inside material nonpublic information.

Jessup Holdings is created shortly thereafter, on April 8th. We have claims settling on April 30th. The Acis claim is transferred to Muck -- that's Farallon -- on April 16. The Redeemer and Crusader are all transferred on April 30th.

Stonehill and Farallon never deny that they did no due -- that they failed to do due diligence. We allege that there was no due diligence. And that relies in significant part upon Mr. Dondero. But now, because we have Mr. Seery's deposition, it also relies upon Mr. Seery's admissions in deposition, because he says he never opened up a data room, he doesn't know what due diligence they did. Farallon says the only due diligence they did is they talked to Jim Seery. And how do you invest $163 million, or $10 million or $50 million, whatever the part is, with an internal rate of return six percent, only on the advice of Mr. Seery, who's never been a trustee or a CEO before, unless there's something going on?

Your Honor, public announcement of MGM on May 26th. On

May 28th, two days later, Mr. Dondero calls Farallon. It took Mr. Dondero or his group a few days, a week or so, to even understand who -- that Farallon was involved, because the registrations for Muck and Jessup did not disclose their principals, did not even disclose addresses. They were shell -- they were companies that came in in the last minute to buy these claims incognito, frankly.

They found out that Farallon was involved. They had a call initially with Raj Patel, who is the principal of Farallon. He has three conversations total: One with Mr. Patel and two with Michael Linn. Michael Linn was the one responsible for these claim purchases. Patel admitted that Farallon relied exclusively on Seery and did no due diligence. Linn rejected the premium to sell. The evidence you'll hear today, that Mr. Linn rejected a premium up to 40 percent to sell the claims. He actually said he would not sell at all because he was told by Mr. Seery that the claims were too valuable.

That is evidence of insider trading. Specifically, they said they were very optimistic about MGM and they were unwilling to sell because Seery said too valuable.

We have -- these are the purchases. This is where the Class 9 claims fall. And keep in mind -- Tim, go back -- that $95 million of this upside potential is being told, at least to the publicly available information, that you're never going

to get there. Yet 95 -- $95 million is allocated to this category. So Class 8 is $275 million. Class 9 is 29 -- $95 million.

Next.

So we have the evidence that you'll hear today. Farallon admitted the timing. No due diligence, never denied by the Claim Purchasers. Based upon material nonpublic information. That's our allegation. Purchased over $160 million. This is never denied by the Claims Purchasers. They purchased claims when the return on investment was highly doubtful. Maximum expected annual rate of return, assuming publicly-available information, was approximately six percent, and that is totally atypical of what a hedge fund would seek.

Insider information. We're not talking about just MGM. The Respondents want to narrow the Court's inquiry. This is much larger than MGM. MGM is a part of it, it's a big part of it, but it's not the only part of it. It's other assets. Portfolio companies. Other invested assets. There's a lot of money out there, and it was never disclosed during the ordinary course of the bankruptcy, for reasons that the Court already knows, in terms of asset values. How does someone come in and purchase distressed assets, claims, without any understanding of what assets are backing those claims, when there's no publicly-available information there to do it and there's no evidence, no indication, no statement that actually

due diligence was done?

That right there, without anything else, makes our claims plausible. You don't have to prove insider trading by direct evidence. Nobody's going to admit that they did something wrong. You prove it circumstantially, and we've cited cases and we'll give you cases to that effect.

Next.

We have material nonpublic information. It is very clear that Mr. Dondero on December 17th sent this email, not just to Mr. Seery but to several other individuals, including lawyers. It states that he'd just gotten off a board call. A pre-board call. The update, he provides the update. Active diligencing. It's probably a first-quarter event. We can scour all of the other media documents that are in evidence, both from us and them, and you're not going to find any indication anywhere that a board member has said, guys, gals, it's going to be a probable first-quarter event. That's material nonpublic information.

THE COURT: By the way, you all objected to this exhibit.

MR. MCENTIRE: No, this is my exhibit.

THE COURT: We spent --

MR. MCENTIRE: I did not. They objected to this.

MR. MORRIS: Your Honor, we didn't object to it, and that is the one exhibit that they did not object to.

THE COURT: Oh, it is?

MR. MORRIS: Nobody objected to this exhibit.

MR. MCENTIRE: I'm not going to object to this exhibit, Your Honor.

THE COURT: Okay. It's a different version.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. It was a different email around that same time frame.

MR. MCENTIRE: So just --

THE COURT: Apologies. We stopped the clock.

MR. MCENTIRE: This -- my next exhibit is simply a demonstrative, but I just want the Court to understand that MGM is no small matter here and Mr. Seery did testify in deposition that it probably made up $450 million. He was pretty close.

MR. MORRIS: Your Honor, I object to this demonstrative. There is no evidence in the record. It's not cited to anything. We're not just going to start putting up stuff on the screen that we like.

MR. MCENTIRE: Excuse me. I'm not offering this document into evidence.

MR. MORRIS: I don't care. The Court shouldn't be seeing a demonstrative exhibit that contains matters that are never going to be in the record.

THE COURT: Okay.

MR. MCENTIRE: I disagree. I can put the data in the record.

May I proceed?

MR. MORRIS: But you didn't.

THE COURT: Okay. I'm not considering the truth of this until and unless I get evidence of this.

MR. MCENTIRE: Fair enough. But the point is this, Mr. Seery has conceded in deposition that between the institutional funds and the CLOs, there's a lot of MGM securities and stock. We're talking a lot of money. We're not talking about just Highland Capital's investment.

You can skip the next slide. Skip.

So, rumors versus material nonpublic information. They can talk all day long, and if they want to use their time doing this, they can. There's a difference between rumor and actual material nonpublic information. Rumor from undocumented sources, lack of clarity, lack of timing. There is no -- there's no debate that a lot of people knew that maybe MGM might be for sale. Maybe they wouldn't. Sometimes it falls apart, you know. But the point is a board member is telling someone that there's a probable event in the first quarter of 2021. That is definite, specific, and it comes from the highest authority. That is -- if that's not material and public information, I don't know what could be.

Classic indications of insider trading. You have to have

a tipper with access to MNPI. Here, we know that Mr. Seery, if he's the tipper, we allege he's the tipper -- and these are words of art out of case law, by the way -- he has access to information about MGM. He has access about asset values, projected values. He has a relationship. We believe he has a very strong relationship. It's more than just social acquaintances. He's giving congratulatory emails. He's getting solicitations. He's solicited. Benefits received. We know what the benefits are. They get the opportunity to invest money with huge upside.

There was a point mentioned some time ago that, well, only -- only the sellers really have the grievance. Well, Your Honor, we have a right to start our lawsuit and do some discovery, because, frankly, a lot of sellers have big-boy agreements. They say, you don't sue me if I have MNPI. I don't sue you if you have MNPI. We have mutual releases. Let's go by our way. Everybody's happy. We're not going to come back and see each other ever again.

That's one of the things we're being deprived of here. But otherwise, what we have here is a colorable plan. We've asked for the communications with the sellers. We can't get it. We have here an email.

Next.

We have here an email. This actually -- you'll hear Mr. Dondero say this actually reflects three communications. Raj

Patel, Farallon, bought it because of Seery. Mr. Dondero contacted Mr. Patel and says, Raj Patel bought it because of Seery. 50 to 70 percent's not compelling. Class 8. 50 percent, 70 percent. Give you a 30 percent to 40 percent premium. Not compelling. I ain't going to sell. Ask what would be compelling. Nothing. No offer. Bought in February/March. We now know the time frame. We know that Stonehill is communicating with them and we know that Farallon has been just communicating with Mr. Seery. Bought assets with claims. It's not just the MGM. It's not just the portfolio companies and other assets. It's also the claims.

Well, what are the claims? It's the claims against Mr. Dondero. Well, how would they know about all this if there's no due diligence and there's no evidence of any due diligence before you? 130 percent of costs, not compelling, no counter. Mr. Dondero's angry. Discovery is coming.

Atypical behaviors are also circumstantial evidence of insider trading. We have strange behaviors here, Judge. We have a vast majority of the claim value is acquired by only two entities post-confirmation. Most significant claims are only owned by two entities who were strangers to the whole process.

The removal of -- and Mr. Morris offered to stipulate. The sudden removal of MGM from the compliance list in April of 2021 -- by the way, the removal doesn't cleanse the MNPI. If

you have material nonpublic information because you received it from Mr. Dondero, the fact that Mr. Dondero's no longer employed by Highland Capital or no longer directly or formally affiliated doesn't cleanse the MNPI.

We have no due diligence, regardless of the significant nine-digit numbers, and we have no rational explanation of why this kind of money would be invested when they're projecting an actual loss, if -- a modest return at best for Class 8 and a loss for Class 9.

Insider trading can be proved by circumstantial evidence, Your Honor. No fraudster, no person who's done wrong is going to admit to it, so you look for the classic -- you look for the classic elements. And that's what we had here. And we have alleged all of this in our pleadings. Not in extraneous evidence. Within the four corners of our pleadings. And that's why we have a plausible claim.

You know, I believe it's Rule 8, Rule 9 of the Federal -- you have to require specificity in a fraud claim. Well, this is not a fraud claim. This is a different claim. But we have provided specificity that passes the smell test of colorability. We have provided specificity that would satisfy even more stringent requirements under 12(b)(6).

The plan analysis. This is a, I think, a document admitted by everyone. Mr. Seery has testified that this projection of 71.32 percent for Class 8 came out in February

of 2021 and never changed, all the way up to the effective date.

So this is what the public believed. This is what the public knew. And if this was all that Farallon and if is all that Stonehill had access to, that means that they were going to lose their entire investment on Class 9. They bought UBS at a loss to begin with. And on the other three investments, they were going to get a very, very modest, minor return, six percent over three years, or even less. That is not what hedge funds do.

Seery's excessive post-effective date compensation. We have obtained no discovery from Farallon or Stonehill in this regard, but we know that he had no prior experience. We know that the award that was given him was not market-based, even though the self-serving documents that have been produced and that are attached to their exhibit list suggests a robust negotiation. Well, they were robust without any kind of reality check in the real world about whether it was market-supported. None. Mr. Seery has admitted to that.

It was not lowered. He's making $1.8 million a year right now, with most -- a lot of the assets already sold, the reorganization done. All they're doing now is monetizing assets. He's getting $1.8 million. He's got 11 people working for him. And then he has a bonus, a bonus that is -- increases significantly with his ability to recover for Muck,

Jessup, Farallon, and Stonehill.

And in the absence of -- if we were really dealing with uncertainty and risk, then that may be another issue, but here we're dealing with entities that already know that they're going to get a payday and they already have. They've already made about a $170 million return -- 170 percent return, excuse me -- over and above the original investment, when they were projected to actually lose money.

Just so you know, we have over $534 million of cash that has been basically monetized, and out of that, $203 million in total expenses -- $277 million to Class 8 and -- and -- 1 through 7, and Class 8 distributors. Excuse me, creditors. Even if you take -- if you take out the alleged obligations of Mr. Dondero on the promissory note cases, that still leaves over $100 million available, which puts us in the money. Puts us in the money. And the fact that you have $203 million of expenses in a case of this nature is part of our claim, is that we have delay actions. We have a situation where Mr. Seery is continuing to receive $1.8 million a year on a slow pace to monetize, paying other professionals, when this could have been over a long time ago. That's part of our allegations. It's not part of any valuation motion. It's actually in our allegations.

I'm going to reserve the rest. I think that's my opening statement, Your Honor. I'm going to reserve the rest for my

closing. And let me see. Yes, that's right. And thank you for your time.

THE COURT: All right. Caroline, how much time was that?

THE CLERK: Thirty-four minutes and 27 seconds.

THE COURT: Thirty-four minutes and 37 seconds. Okay.

THE CLERK: Twenty-seven.

THE COURT: Oh, 27. Okay.

MR. MCENTIRE: Thirty-four minutes?

MR. MCCLEARY: Thirty-four minutes.

MR. MORRIS: Your Honor, I do have hard copies of my short slide presentation.

THE COURT: All right. You may approach.

And Mr. McEntire, are you going to give me your PowerPoint later, hard copies later?

MR. MCENTIRE: Yes, Your Honor. I found one typo and I'd like to fix one typo and then we'll give it to you.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management and the Claimant Trust.

I want to be fairly brief because I really want to focus on the evidence. I look forward to Your Honor hearing from

Mr. Seery so that he could clear up a lot of the misleading statements that were just made.

The Court is here today on a gatekeeper function, and we're delighted that the gatekeeper exists. We're delighted that the Court will have an opportunity, after considering evidence, to determine whether or not these claims are actually colorable.

There's -- there were a lot of conclusory statements I just heard. There were a lot of assumptions that were made. There were a lot of misleading statements that were made. At the end of the day, what the Court is going to be asked to do is to decide whether, in light of the evidence, do these claims stand up on their own? And they do not.

And let me begin by saying that I made a mistake a couple of weeks ago. If we can go to Slide 1. I told Your Honor that you were the sixth body to consider these insider trading claims. Based on Hunter Mountain's exhibit list, there is actually one more, and I'll get to that in a moment. So you're actually -- this is the seventh attempt to peddle these claims to one body or another.

The first was Mr. Dondero's 202 petition.

Everything I have here, Your Honor, is footnoted to evidence. Okay?

So, Footnote 1, you can look in the paragraphs of Mr. Dondero's petition, his amended petition, his declaration,

where he makes the same allegations. Again, I misspeak. Not the same allegations. Different versions of the allegations that are being presented today concerning insider trading.

He did it three times. The Texas state court said no discovery. In October of 2021, Douglas Draper wrote an extensive letter to the U.S. Trustee, setting forth the same allegations. You can find them at our Exhibit 5. It's attachment Exhibit A, Pages 6 through 11. Compare them to the allegations that are being made by Hunter Mountain today. The U.S. Trustee's Office took no action.

Mr. Rukavina followed up with the same thing to the same body in November of 2021. You can see where his allegations of insider trading are made and *quid pro quo* and all the rest of it. Again, they took no action.

The one that I don't have on this chart because I didn't -- I made the chart last week and then was unavailable. Mr. Rukavina sent a second letter. And you can find that at Plaintiffs' Exhibit 61. And in Plaintiffs' Exhibit 61, you'll see that Mr. Rukavina sent yet another letter to the U.S. Trustee's Office on May 11, 2022.

And these are all really important, right? The U.S. Trustee's Office has oversight responsibility for matters including claims trading. That's their job. They took three different swings at this. And these are pages of allegations. 6 to 11. 9 to 13. We think it's very important that the

Court look at what was told to the U.S. Trustee's Office. And you're going to hear Mr. Seery testify that Highland has never heard from the U.S. Trustee's Office concerning any of these allegations or any of the other allegations that are set forth in Mr. Rukavina and Mr. Draper's letter. Never. Declined to even initiate an investigation.

Hunter Mountain filed its own 202 petition. It boggles my mind that they try to create distance with Mr. Dondero, because the whole petition, like this whole complaint, is based on Mr. Dondero. He submitted a declaration alleging the same insider trading case, and a second Texas state court said I'm not even giving you discovery. We know that's the result.

But the best is the Texas State Securities Board. I think we're going to hear testimony that Mr. Dondero or somebody under his control is the one who filed the complaint with the Texas State Securities Board. Who would be the better body to assess whether or not there's insider trading than a securities board? I can't imagine there's a better body. They did an investigation. Mr. Dondero could have told them anything he wanted. I'm sure he did. And they wrote in their motion in Paragraph 37 one of the reasons they have colorable claims is the investigation is ongoing.

Much to their dismay, I'm sure, two days before our opposition was due, the Texas State Securities Board said, we've looked at the complaint, we've done our investigation,

and we're not taking any action. You can find that, Your Honor, Footnoted 5 at Exhibit 33.

You are now the seventh body who's being asked -- and you're being asked to do substantially more than any of the other prior bodies were. The Texas state courts were being asked, just let them have discovery. They said no. The U.S. Trustee's Office, charged with the responsibility of looking at claims trading, said, I'm not going to investigate. I know what you've told me. No. The Texas State Securities Board. Insider trading, insider trading. I'm not doing an investigation. I'm not doing anything. And now they want to come here and engage in, you know, in expensive, long litigation over the same claims nobody else would touch.

Can we go to the next slide?

Mr. Dondero's email. Good golly. "Amazon and Apple are in the data room." There's a hundred articles out there that they're putting into evidence that say that. "Both continue to express material interest." There's a hundred articles out there that say that. "Probably a first-quarter event. Will update as facts change."

There will not be any evidence that he ever updated anybody, because that wasn't the purpose of this, as Your Honor will recall. He had an axe to grind.

And I direct your -- I don't direct the Court to do anything -- I ask the Court to take a look at our opposition

to the motion, in Paragraphs 23 to 25, where we cite to extensive evidence, all of which is now part of the record, showing just what was happening, from the moment he got fired on October 10th until the end of the year, with the interference, with the interference, with the threats, with the TRO. It was nonstop.

Was this email sent in good faith by somebody who owed no duty to anybody? Or was it really just another attempt -- and this is why the gatekeeper is so important, because I think that's exactly what this Court is supposed to do: Is this a good-faith claim? Is this a claim that's made in good faith? It can't be. And you know why? You know what's -- you know what's -- I'll just say it now. I won't even save it for cross.

Remember the HarbourVest settlement that they're making so much, you know, about? Mr. Dondero is the tipper. According to him, he gave Mr. Seery inside information. According to him, Mr. Seery abused it by engaging in the HarbourVest transaction. But Mr. Dondero filed an extensive objection to the HarbourVest settlement and never said a word about this, because that wasn't on his mind at the time. The email was sent in order to interfere. And when that failed, he's trying to play gotcha now. It's ridiculous.

He owed no duty to Highland. It would have been a breach of his own duty to MGM to share that information at that

period of time.

The shared services agreement. They don't help him. Mr. Dondero has nothing to do with that. Highland is providing services. He's not providing services to Highland. Highland was providing. We had already given notice of termination. We had already had our plan and disclosure -- we had already had our disclosure statement approved. We were weeks away from confirmation. Please.

And the *Wall Street Journal* article on December 21st at Exhibit 27, that's not your garden-variety *Wall Street Journal* article, because it specifically says that investment bankers were engaged to start a formal process. The investment bankers are identified by name. Something has changed. Anybody could see that.

Yes, there were rumors for a long time. Nobody had ever said there was a formal process. Nobody had ever said investment bankers had ever been hired. Nobody had ever identified those investment bankers. Right? I mean, just the world changed.

If you can go to the next slide.

You know, before I get to the next slide in too much detail, *quid pro quo*. We look at it as *quid*. Did he -- is there any evidence that he actually gave anybody material nonpublic inside information? The answer is going to be no. The *quo* is the relationship. And I'm not going to spend too

much time on that now. But wait until you hear Mr. Seery testify as to the actual facts about his relationship. Because some of what we just heard is mind-boggling, that little -- that little page from the *Blockbuster* case, like, 14 years ago, where Farallon was one of a group of people who Jim Seery never met. Like, the stretch, what they're trying to do is beyond the pale. But I'm delighted to have Mr. Seery sit in the box and answer all the questions they want to ask him about his relationship with Farallon and Stonehill.

But getting to the point, the *quid pro quo*. The *quo* is they fixed his compensation? Are you kidding me? They rubber-stamped his compensation? Highland and Mr. Seery and the board are alleged to have negotiated? There's nothing alleged. There are facts. There is evidence. It is beyond dispute. If you look, just for example, right, they take issue with his salary? The salary was fixed by this Court in 2020. Without objection. He's getting the exact same salary that he ever got.

You'll hear that it's a full-time job. Your Honor knows better than anybody in this courtroom, other than me, perhaps, the litigation burden that's been placed on this man. He has no other income. He doesn't do anything else. This is a full-time job. It's the exact same job that he had when Your Honor approved his compensation package three years ago, without a raise. They didn't give him a nickel more. Not one

nickel. It's outrageous.

The balance of his compensation, of which he has not yet received a nickel, is exactly what this Court would want somebody in Mr. Seery's position to do. It aligns his interests with his constituency. Not with Stonehill. Not with Farallon. With all creditors. The greater the recovery, the greater the bonus. Outrageous, right? Remarkable, isn't it? Only in their world.

If Your Honor can go back to Mr. Rukavina's letter, because this is where it all -- that's where it all starts from. Like, excessive compensation. Mr. Rukavina, I don't know how he did this, why he did it, what it was based on. He actually told the U.S. Trustee's Office that they thought Mr. Seery made $50 million. It's in the letter. $50 million, they told the U.S. Trustee's Office he made. It's footnoted, so you can go find it. It's right there, at Page 14. Quote, Seery's success fee could approximate $50 million.

$8.8 million is what he's making. They think that's excessive? What do they think he should make? Three? Five? We're not going to hear that. But that's what this case is about. You just heard counsel in his opening statement. He literally said the only thing at issue is his compensation. And that has to be the case, because if there was -- if there was no claims trading, UBS and HarbourVest and Acis, right, the Redeemer Committee, they would all still be holding these

claims today.

When Stonehill and Farallon acquired the claims, they were all allowed. There was no debate about what the claims were. If they held the claims today, they would be worth the exact same amount of money, only a different person would be benefitting from it.

So the case actually is only about Mr. Seery's compensation. And they've moved the goalposts, as often happens in this courtroom, from rubber-stamping -- I'll give you what you want. When I hear rubber-stamp, I hear, you make a demand and I'll give it to you. And now they realize, when they see the negotiation -- because it's in evidence, it's just the documents, you can see the board minutes -- what do we, doctor the board minutes and they should get discovery because we doctored the board minutes? The board minutes show a four-month negotiation with an Independent Board member fully involved. It's mind-boggling. It's actually -- well, I'll just leave it at that.

Next slide. Last slide. Let me finish up. Three of the four sellers were former Committee members. Mr. Dondero agreed that Committee members would have access to special nonpublic inside information as part of the protocols, as part of the corporate governance settlement. He agreed to that. These are the people who got abused? These are the people who didn't know what was happening? Committee members and

HarbourVest, probably one of the biggest and most sophisticated funds in the world, didn't know what was happening? They got abused? Stonehill and Farallon took advantage of them?

If you read their pleadings closely, they actually allege, and I don't -- I don't know if there'll ever be any evidence of this -- but they actually allege that -- I forget which -- oh, somebody is an investor in Stonehill and Farallon, and so the theory is one of the sellers is an investor in Farallon. So not only did they abuse, they abused one of their own investors. Like, this is not a colorable claim. This is ridiculous.

None of the claims sellers are here. Sophisticated people who -- who -- right? Mr. Dondero could pick up the phone and say, hey, guys, you got ripped off. You sold your claims when you shouldn't have. They had an unfair advantage.

Nobody's here. Where is anybody complaining? They're not going to because they cut a deal that they thought was good for them at the time. In hindsight, maybe they have regrets. Right? We all have regrets sometimes in hindsight. But that doesn't create a claim.

We've heard so much about what hedge funds would get and how much and is this rational? The fact of the matter is, at the time Mr. Dondero had his phone call on May 28th, UBS had not been purchased, although MGM had already been announced.

So when they talk about MGM, maybe it's the fact -- and this is in evidence -- maybe it's the fact that, two days before, the MGM-Amazon deal actually was publicly announced. It actually was. So maybe when they say, hey, yeah, we like MGM, because, you know, that just -- that just got announced. Maybe that happened.

But at the end of the day, the claims that they bought, if you just look at the claims that were purchased at the time he had the conversation, all Mr. Seery had to do was meet projections and they were going to get $33 million in two years. A 30 percent return in two years. I don't know. That doesn't -- that doesn't sound crazy to me. Doesn't sound crazy to me. It certainly doesn't create a colorable claim, just because they think that Farallon or Stonehill -- there's not going to be any evidence of Farallon or Stonehill's risk profile. There's not going to be any evidence of Farallon or Stonehill's, you know, expected returns. There's not going to be any evidence at all about what due diligence they did or didn't do, other than what comes out of Mr. Dondero's mouth, as usual.

Mr. Dondero -- and let's look at what's going to come out of Mr. Dondero's mouth. He has multiple sworn statements. I'm going to take his notes and they're going to become mine. I'll put him on notice right now. Because those notes bear no relationship to the evolution of his sworn statements over

time.

The first time he mentions MGM in a sworn statement is two years after the fact in Version #5. That's a colorable claim? You want -- you want to oversee a litigation, or maybe it gets removed to the district court, maybe I get lucky to be in front of a jury, and I'll have Mr. Dondero explain how it took him five tries before he could write down the letters MGM. Not a colorable claim. No evidence against Stonehill whatsoever. Zero. Zero. Never spoke to them. There's no colorable claim here, Your Honor.

I'm going to turn the podium over to Mr. Stancil to talk about the law.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. Mark Stancil, counsel for Mr. Seery. But I'm going to just very briefly address a few legal points. And I actually mean briefly.

THE COURT: Okay.

MR. STANCIL: I'll come back to a good bit of this in closing as time permits.

I heard Mr. McEntire say *Barton* doesn't apply. I would encourage him to start with what the gatekeeping order actually says. Here it is. This is in -- it's in the plan. Your Honor has confirmed it. The question we have in terms of what standard applies is, what does this order mean? Well, we

think that's going to be clear. It's not what they think the word "colorable" would mean in other contexts. It's not what they think they should have to satisfy now that they have a theory. It's, what does this mean?

And we'll get into some of the additional evidence from Your Honor's order at the time, later in closing.

Next slide, please.

But let me just start to say I'm awfully surprised to hear him say that he doesn't believe *Barton* applies, because the order says that it does. This is Paragraph 80 of the confirmation order. It says that the Court has statutory authority to approve the gatekeeper provision under these sections of the Bankruptcy Code. The gatekeeper provision is also within the spirit of the Supreme Court's *Barton* Doctrine. The gatekeeper provision is also consistent with the notion of a pre-filing injunction to deter vexatious litigants that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures*.

So I think it is impossible, and respectfully, Your Honor, it's law of the case. This is what the order is based on. The day for objecting to what's in the confirmation order is long gone.

So let me come back, then -- first slide, please -- and I'll just very briefly give you a little legal framework for what we're going to be arguing to you later in closing.

So, *Barton* does require a *prima facie* showing. That is *Vistacare* and plenty of other cases. That is more than a 12(b)(6) standard, Your Honor. Numerous courts agree. And in fact, as you'll hear us discuss later, Judge Houser's opinion is not to the contrary, because she said explicitly, I'm not applying *Barton*. So anything that they're relying on for what *Barton* requires from that opinion is *dicta*. But we can show you case after case after case, and we will, to show that *Barton* requires evidentiary hearings.

Here's a point, this third bullet here is something I have not heard a single word in all of the briefing and ink that has been spilled and in as long as we've been here this morning, is what is a gatekeeping order doing if all it does is reproduce a 12(b)(6) standard? That's what they say. In fact, they're actually saying it's even lower. Now I think I heard them say it's even lower than a 12(b)(6) standard.

That makes no sense whatsoever. We've just shown you that this gatekeeping order was imposed consistent with *Barton* and vexatious litigant principles. Later I will walk Your Honor through factual findings that you made detailing the vexatious litigation, detailing the abuses. The notion that the gate is the same gate that every other litigant who hasn't demonstrated that record of bad faith is absurd, and it serves no purpose.

And as Mr. Morris described, Hunter Mountain woefully,

woefully violates any *prima facie* showing. And we'll get into a little bit more exactly how that works.

We are going to ask this Court, in addition to ruling that *Barton* applies and that they've failed it, we're going to ask this Court, respectfully, to please consider ruling on multiple independent grounds as well. We know there's a penchant for appeals and appeals upon appeals. So we will argue to Your Honor, although we will largely spare you another rehash of our briefs, but we will explain to Your Honor why they do lack standing to bring this claim as a matter of Delaware law. And there was a lot of fuzzing up about constitutional standing and Delaware law. Not necessary.

If -- we will be happy to rely on our pleadings here, but on Page 27 of the Claimant Trust Agreement, that's what defines their rights under Delaware law, and they were talking about how beneficial owners under Delaware law have standing. Well, are they beneficial owners? They are not. Equity holders -- this is in Paragraph C, Page 27 of the Claimant Trust Agreement -- Equity holders will only be deemed beneficiaries under this agreement upon the filing of a payment certification with the bankruptcy court, at which time the contingent trust interests will vest and be deemed equity trust interests.

They are not beneficial owners of squat. That has not

happened.

And last, Your Honor, we will -- and I will organize this for Your Honor in closing as well -- we would ask you to rule on a straight-up 12(b)(6) standard as an alternative, because we know what's coming on appeal and we think their complaint collapses under its own weight. You heard Mr. Morris detailing their own math shows significant returns. You'll also hear us describe how they have nothing but mere conclusions and naked assertions upon information and belief but unsupported.

Iqbal and *Twombly* would still apply under their 12(b)(6) standard, especially, and perhaps even more with a heightened standard under Rule 9(b), because they're essentially alleging some version of fraud, it sounds like.

They're never going to get there, Your Honor. All we would ask is for a full record to take inevitably, unfortunately, to the Court of Appeals.

And I think Mr. -- I'm not sure which of my colleagues will be speaking briefly for Holland & Knight, but I'll just turn it over to them.

THE COURT: All right. Mr. McIlwain?

OPENING STATEMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Thank you, Your Honor. I'll be even briefer. Brent McIlwain here for the Claim Purchasers.

Your Honor, Mr. McEntire stated to this Court that my

clients have never denied any of this. In fact, in his reply, he says, The Claim Purchasers do not deny that they invested over $163 million. We do not deny that we did not due diligence, we do not deny that we refused to sell our claims at any price, and we do not deny that we invested the claims at what is, at best, a low ROI.

We had no duty to answer to HMIT or Mr. McEntire. We had no duty when we bought these claims to -- we had no duties to any creditor. We had -- it was a bilateral agreement with a third party. And frankly, Your Honor, it's not Mr. Dondero's or HMIT's business what due diligence we did and what information that we obtained.

But I will tell you right now, Your Honor, we were very careful in our pleadings to not bring issues of fact, because this -- HMIT has been chasing my clients, obviously, based on the notes that were presented in the initial PowerPoint, it was a -- it's retribution. It's retribution for not agreeing to sell the claims to Mr. Dondero when he offered to purchase at a 40 percent premium.

And Your Honor, when I look at that note, it's interesting, because I hadn't seen the note, obviously, until it showed up on the exhibit list. When you look at that note, I think it's -- I think it's very interesting. To the extent it was contemporaneous, I don't know. But what it shows, it shows that if you're a hammer, everything's a nail. And Mr.

Dondero is a vexatious litigator. And what did he write down? Discovery to follow.

But my question is this. Who was trying to trade on inside information? Mr. Dondero was offering a 40 percent premium, allegedly, on the cost. What information did he have? Certainly, he had inside information.

My client owed no duty to Mr. Dondero. My client owed no duty to anybody in this estate at the time of these claims purchase.

And Your Honor, we talk a lot about -- or, it's been talked a lot of insider trading. These are claims trades. I think the Court honed in on this from the very get-go. The Court does not have a role in claims trades. There's a 3001 notice that's filed post-claims trade, but there's no requirement that there's Court approval.

And these aren't securities. It's not as if we're trading claims and it could benefit or hurt you based on some equity position that you're going to obtain. We obtained claims that had been settled, they were litigated heavily, and the most that we can obtain is the amount of the claim. And that is, as Mr. Morris stated, all that changed was the name of the claimant. That's all. Because the claims didn't increase in value based on the trade.

Your Honor, our pleadings, I think, speak for themselves in terms of you really -- you really don't have to consider

evidence, from our perspective, to determine that this proposed complaint has no merit and is not plausible and presents no colorable claims.

The gatekeeper provision, and we're going to talk a lot about that today, obviously, right, requires that Mr. Dondero establish a *prima facie* case that the claims have some plausibility. If you can simply write down allegations, file a motion for leave and attach those allegations and say, Your Honor, you have to take all these as true, the gatekeeper has no meaning. There's no point in having a gatekeeper provision.

And in summary, Your Honor, what -- and I think Mr. Morris honed in on this specifically -- this really comes down to compensation. Right? Because this -- the allegation is that my clients purchased claims, presumably at a discount, right, based on some inside information, which we obviously deny, but we don't have to put that at issue today. For what purpose? For what purpose? So we got inside information from Mr. Seery so that we could then scratch his back on compensation on the back-end?

Your Honor, there is no reason that my clients need to be involved in this litigation. If HMIT thinks that this -- that they have a claim against Mr. Seery for excessive compensation, they can -- they could have brought such a gatekeeper motion, or a motion for leave under the gatekeeper

provision, without including my clients. Why did they include my clients? They included my clients because my clients did not sell to Mr. Dondero when he called, unsolicited, to try to get information. It's retribution. And that's what a vexatious litigator does, and that's why the gatekeeper provision is in place.

I'll reserve the rest for closing, Your Honor.

THE COURT: All right. Caroline, what was the collective time of the Respondents?

THE CLERK: Twenty-eight minutes and 37 seconds.

THE COURT: Twenty-eight minutes, 37 seconds.

All right. Well, let's talk about should we take a lunch break now? I'm thinking we should, because any witness is going to be, I'm sure, more than an hour. So can you all get by with 30 minutes, or do you need 45 minutes? I'll go with the majority vote on this.

(Counsel confer.)

MR. MCENTIRE: 1:00 o'clock. 45 minutes.

MR. MORRIS: 40 minutes, whatever. 1:00 o'clock?

THE COURT: We'll come back at 1:00 o'clock.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:19 p.m. until 1:05 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matter, the Hunter Mountain motion for leave to file lawsuit.

I'll just let you know that at 1:30 we're going to take probably what will be a five-minute break, maybe ten minutes at the most, because I have a 1:30 motion to lift stay docket. Just looking at the pleadings, I really think maybe one is going to be resolved and it won't be more than five or ten minutes. So whoever is on witness stand can either just stay there, because I think we won't be finished, or you can take a bathroom break or whatever. All right? So, it's video, the 1:30 docket.

All right. So, Mr. McEntire, are you ready to call your first witness?

MR. MCENTIRE: I am, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: May I proceed?

THE COURT: You may.

MR. MCENTIRE: At this time, Hunter Mountain calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, welcome. If you could find your way to the witness box, I will swear you in once you're there. It looks like you've got lots of notebooks there. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. You may be seated.

MR. MCENTIRE: I'm not familiar with your procedure. Should I approach the -- here to --

THE COURT: If you would, unless you're having --

MR. MCENTIRE: That's fine.

THE COURT: -- any kind of --

MR. MCENTIRE: That's fine. I'm not.

THE COURT: -- knee issues or, you know, sometimes people want to stay seated for that reason.

MR. MCENTIRE: Your Honor, again, my tender of Mr. Dondero as a witness is subject to our running objection on the evidentiary format.

THE COURT: Understood.

JAMES DAVID DONDERO, HUNTER MOUNTAIN INVESTMENT TRUST'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Dondero, would you state your full name for the record, please?

A James David Dondero.

Q With whom are you currently -- what company are you currently affiliated with?

A Founder and president of NexPoint.

Q All right. And I think the Court is well aware, but would

you just briefly describe your prior affiliation with -- was it Highland Capital?

A Yes.

Q What was that affiliation?

A President and founder for 30 years, and then to facilitate an expeditious resolution of the estate I handed the reins to three Independent Board members and I became a portfolio manager until October of -- I was an unpaid portfolio manager until October of '20.

Q Thank you, sir. Do you have any current official position with Hunter Mountain Investment Trust?

A No.

Q Can you describe for us, sir, any actual or control you attempt to exercise on the business affairs of Hunter Mountain Investment Trust?

A None.

Q Are you -- do you have any official legal relationship with Hunter Mountain Investment Trust where you can attempt to exercise either direct or indirect control over Hunter Mountain Investment Trust?

A I do not.

Q Did you participate -- personally participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan?

A I did not.

Q As the former CEO of Highland Capital, are you familiar with the types of assets that Highland Capital owned? On the petition date?
A Yes.
Q And have you been monitoring these proceedings and the disclosures in these proceedings since the petition date?
A Yes.
Q Okay. Can you describe generally for me the types of assets on the petition date that Highland Capital owned? The types of assets? Describe the types of assets -- companies, stocks, securities, whatever, whatever you -- however you would describe it.
A There were some securities, but it was primarily investments in private equity companies and interests in funds.
Q Okay. I've heard the term portfolio company. What is a portfolio company?
A A portfolio company would be a private equity company that we controlled a majority of the equity and appointed and held accountable the management teams.
Q Would there be separate management, separate boards, for those portfolio companies?
A Yes.
Q All right. How many portfolio companies were there on the petition date, if you're aware? If you recall?

A Half a dozen, of different sizes.
Q Can you identify the names, if you recall?
A Yes.
Q What are those names?
A Trussway, Cornerstone, some small -- Carey International, CFA, SSP Holdings. Yeah, to a lesser extent, OmniCare.
Q All right.
A Or, um, --
Q In addition to the portfolio --
A Sorry.
Q -- of companies in which Highland Capital would own interests, did Highland also have interests in various funds?
A Yes. I said OmniCare. I meant OmniMax, I think was the name.
Q What type of funds?
A I'm sorry. The funds were usually funds that we were invested in or seeded or managed. So they're things like Multistrat, Restoration, a Korea fund, PetroCap.
Q Are these managed funds by Highland Capital? Or were they?
A Yes. Pretty much, with the exception of PetroCap. We were a minority -- a minority -- a large -- a large minority investor with a sub-advisor.
Q Did Highland Capital Management on the petition date own an interest, a direct security interest in MGM?

A Yes. And I -- yes.
Q Did the various portfolio companies that you've identified, did one or more of those portfolio companies also own MGM stock?
A Yes.
Q Did the various funds that you've identified, did one or more of those funds also own MGM stock?
A Yes. Between -- yes. Between the CLOs, the funds, Highland directly, it was about $500 million that eventually got taken out for about a billion dollars.
Q Okay. $500 million is what you said?
A Approximately. Depending on what mark, what time frame. But ultimately they got taken out for about a billion dollars.
Q Okay. And as a consequence of these investments, significant investment -- first of all, how would you describe that magnitude of investments? Is that a significant investment from the perspective of MGM?
A Yes.
Q As a consequence, what role, if any, did you play in terms of MGM's governance? Were you -- did you become a member of the board of directors?
A Yes. I was a board member for approximately ten years, and myself and the president of Anchorage, between our two entities, we had a majority of the equity in MGM.
Q Okay. If there was a third party, not familiar with the

management of Highland Capital, who had been monitoring these bankruptcy proceedings as you have, was there any way that a third-party stranger to this bankruptcy proceeding could, from your perspective, actually appreciate or identify the -- all the details of the investments that Highland Capital had?

MR. MORRIS: Objection to the form of the question. It calls for speculation. He's not here as an expert today. He shouldn't be allowed to testify what a third party would or wouldn't have thought or known.

MR. MCENTIRE: Well, I'll --

THE COURT: I'll overrule.

BY MR. MCENTIRE:

Q Mr. Dondero?

A The disclosures in the Highland bankruptcy were scant. I think there was six or eight line items listed, the descriptions of which were limited. But it didn't include -- it didn't include a broad listing of all the funds, and it didn't include subsidiaries or any net value or any offsetting liabilities or risks of any of the underlying companies or investments, either.

MR. MCENTIRE: Would you put up Exhibit 3, please?

BY MR. MCENTIRE:

Q Mr. Dondero, we're going to -- do you have a screen in front of you as well?

A Yes.

Q We're going to put up Exhibit 3, and I'm going to ask you some questions about it. First of all, would you identify Exhibit 3?
A It didn't come up on my screen yet.
Q Still not up there?
A Yes. Now it is.
Q Can you identify Exhibit 3, please?
(Discussion.)
Q There we go. Mr. Dondero, would you identify Exhibit 3, please?
A This was an email I sent to Compliance and relevant people to put -- to put MGM on the restricted list.
Q It indicates it was on December 17, 2020. Did you personally author this email?
A Yes.
Q You sent it to multiple individuals, including Mr. Surgent. Was Mr. Surgent an attorney at Highland Capital at the time?
A He was head of compliance for both organizations.
Q Scott Ellington? Is he an attorney? Was he an attorney at the time?
A He's the general counsel of Highland.
Q You also sent it to someone at NexPoint Advisors, Jason Post. Who is Mr. Post?
A Mr. Post was head of compliance at NexPoint Advisors and a

subordinate of Thomas Surgent's.
Q Jim Seery. Mr. Seery, of course. You also addressed it to Mr. Seery?
A Yes.
Q It says, Trading Restrictions Re: MGM Material Nonpublic Information. What did you mean by the term "material nonpublic information"?
A Material nonpublic information is when you have material nonpublic information that the public does not have, and it essentially makes you an insider and restricts you from trading.
Q All right. It says, Just got off a pre-board call.
First of all, you generated this in the ordinary course of your business, did you not?
A Um, --
Q This email.
A Yes.
Q Okay.
A Yes.
Q And --
A Any restricted list. Restricted list items happen all the time in the normal course of business.
Q And you've maintained a copy of this email as well, have you not?
A I'm sure we have one. I don't have it personally.

Q Fair enough. But you're -- you have -- you have access and custody over emails, correct?
A Not any of my Highland emails.
Q But those were left. Right?
A Yes. Yes.
MR. MORRIS: Your Honor, I mean, he's leading the witness at this point, so I'm just --
MR. MCENTIRE: That's fine.
MR. MORRIS: I'm just --
THE COURT: Okay. Sustained.
MR. MORRIS: -- going to be sensitive to it.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q Mr. -- this is a true and accurate copy of the email that you sent, is it not?
A It appears to be.
MR. MCENTIRE: At this time, I would offer Exhibit 3 into evidence, Your Honor.
THE COURT: Okay. I'm looking through what we admitted earlier. Did we not --
MR. MCENTIRE: This already may be in evidence.
THE COURT: Yes. I'm --
MR. MCENTIRE: I don't --
THE COURT: Was there any objection?
MR. MORRIS: There wasn't. I mean, --

THE COURT: I think there was an objection that I overruled.

MR. MORRIS: No. There wasn't. I mean, unfortunately, we've gotten the short end of the stick here, because all of their documents are in evidence, and I got caught short because I'm going to have to do it the old-fashioned way. But yes, this is in evidence.

MR. MCENTIRE: Okay. Fair enough.

MR. MORRIS: Because -- actually got through all of their documents.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. All right.

BY MR. MCENTIRE:

Q So, Mr. --

THE COURT: So it's in evidence.

BY MR. MCENTIRE:

Q -- Dondero, going back to Exhibit 3, it says, Just got off a pre-board call.

Is that the MGM board, a pre-board call?

A Yes.

Q What is a pre-board call?

A It's a pre-board call that usually sets the agenda. And, again, myself and the Anchorage guys, we would move in locksteps, in a coordinated fashion, generally, in terms of agenda and company policy.

Q It says, Update is as follows. Amazon and Apple actively diligencing in the data room.

What was your understanding of -- of -- what was your intent in conveying that information to the recipients?

A The intent was really in the last sentence, or second-to-last sentence, that the transaction was likely to close. Amazon had come back. We had turned Amazon away earlier in the year at $120 a share, and they said they wouldn't be willing to pay more. And --

THE COURT: Is there an objection?

MR. MORRIS: There is an objection. None of this was shared with Mr. Seery, all of this background that we're -- that we're doing. He -- I would request that we stick with the -- only the information that was given to Mr. Seery, like -- like he's talking about his intent. Like, who cares at this point?

MR. MCENTIRE: Well, --

MR. MORRIS: This is what Mr. Seery got.

THE COURT: Okay. What is your response to that?

MR. MCENTIRE: I have a response to -- well, they've -- they've questioned his intent in sending this in his opening statement.

MR. MORRIS: Ah.

MR. MCENTIRE: And I'm trying to make it clear what his intent was.

MR. MORRIS: So, you know what, Your Honor? *Quid pro quo*. Now we're going to do a real *quid pro quo*. He can ask him about his intent, and then he can't object to all of the other documents and exhibits that I say prove that this was here only to interfere with Mr. Seery's trading activity. I'll do that *quid pro quo*.

MR. MCENTIRE: May I proceed, Your Honor?

THE COURT: You may. Objection is overruled.

BY MR. MCENTIRE:

Q Mr. Dondero, what was your intent in communicating --

A Okay.

Q -- that probably a first-quarter event? What was your understanding?

A After 30 years of compliance education: Taint one, taint all. We were all sitting together. I -- the trading desk was right outside my desk. All the employees of Highland that would eventually move to NexPoint, all the ones that would eventually move to Skyview, all the ones that eventually moved to Jim Seery, were all within 30 feet of my desk.

Q What do you mean by "Taint one, taint all"?

A That's a compliance concept that, as a professional, you have a responsibility, when you are in possession of material nonpublic information, to put something on the restricted list so that it's not traded. Okay? And you can't -- one person can't sit in their cube and say they know something and not

tell anybody else, such that the rest of the organization trades. That's not the way compliance works.

Q It says also no -- also, any sales are subject to a shareholder agreement.

What was the meaning of that or the intent of that?

A There was a stringent shareholder agreement, particularly among the board members, that no shares could be bought or sold without approval of the company.

Q The company here being MGM?

A MGM, yes.

Q What is a restricted list?

A A restricted list is when you believe as an investment professional that you have material nonpublic information, you notify Compliance, and then Compliance notifies the entire organization and prevents any trading in that security.

Q You mentioned the doctrine taint one, taint all. If an individual or -- if an individual within a company setting is found to have traded on material nonpublic information, what is the potential consequence or sanction?

MR. MORRIS: Objection, Your Honor. This is like a legal conclusion. He's not a law enforcement officer. He's not a securities officer. What are we doing?

MR. MCENTIRE: I can rephrase.

THE COURT: Okay. He's going to rephrase.

BY MR. MCENTIRE:

Q Based upon your years -- based upon your years of experience as a board member of MGM, based upon your years of experience as a CEO of Highland Capital and an executive that trades in securities and has sold securities, what is your understanding, from a non-legal perspective, of what the risks are associated with trading on material nonpublic information?
A You could be -- you would be fired from the organization if you did. You could be banned from the securities industry. The industry can shut down the -- or, the SEC can shut down the advisor or they can fine the advisor.
Q Do you know what a compliance log is?
A Yes.
Q Should MGM have been placed on a compliance log at NexPoint?
A Throughout the organization -- throughout the organization, it should -- it should and it was on all -- at all organizations, yes.
Q Should it have been placed on a -- on a compliance log to Highland Capital, from your perspective?
A Yes.
Q Can you give us any explanation of why, to your knowledge, why MGM would be taken off the restricted list in April of 2021 at Highland Capital?
A When an investment professional puts something on the restricted list, in order for it to come off the restricted

list, the material nonpublic information has to be public. So there has to be a cleansing that occurs by the company.

Q To the extent that you were no longer affiliated with Highland Capital in the early portion, the first quarter of 2021, does that somehow cleanse the material nonpublic information that you identified?

A It does not.

Q Why not?

A Because the -- it -- the company hasn't -- the company didn't come out and make public the information that we knew from a private perspective that the transaction was about to go through.

Q You sat here during opening statements when Mr. Morris referred to the various news coverage and media coverage concerning MGM and the fact that people had expressed interest in buying in the past?

A Yes. And at the board level, we had entertained numerous ones. There were rumors that had no basis in fact, and there were negotiations we had with people that were never in the news. But none of them got to this degree of certainty where it was going to close within a couple months.

Q From your perspective as an investment professional, with the years of experience that you described for the Court, what is the difference between receiving an email from a board member such as yourself and rumors or suggestions of possible

sale in the media?
A I knew with certainty from the board level that Amazon had hit our price, agreed to hit our price, and it was going to close in the next couple months.
Q That's not rumor or innuendo; that's hard information from a member of the MGM board?
A Correct.
MR. MCENTIRE: All right. You can take that down, please, Tim.
BY MR. MCENTIRE:
Q I want to talk a little bit about due diligence. When you were the chief executive officer of Highland Capital, --
A Yes.
Q -- can you tell us whether Highland Capital ever involved itself in the acquisition of distressed assets?
A Yes. We did a fair amount of investing in distressed assets.
Q What is a distressed asset?
A It's something that trades at a discount, where the certainty and the timing of realizations or contractual obligations is uncertain.
Q Is a -- well, let me back up. Has Highland -- did Highland Capital ever invest in unsecured claims in connection with bankruptcy proceedings?
A Yes.

Q And in terms of the -- on the spectrum of risk, where does an unsecured creditor claim in a bankruptcy proceeding kind of rank in terms of the uncertainties or risk, from your perspective?

A It's high risk. It's a -- yeah, it would be highly-distressed, generally.

Q Explain to us -- I know the Court is very familiar with claims trading. Explain to us from your perspective as an investment -- a seasoned investment expert or executive what those risks are. What types of risk are associated with such an investment?

A You have to evaluate the assets tied to the claim specifically. Or if it's an unsecured in general, the assets in general in the estate.

You have to handicap the realization that a distressed seller might not get full value for something. You have to handicap the likelihood around that. And then you have to handicap the timing, and then you have to handicap the expenses and the other obligations of the estate, and then handicap risk items that aren't known or that are difficult if not impossible to underwrite, like unknown litigation or last-minute litigation or claims or something.

Q And all these handicapping, this handicapping process, how does that impact the price or the investment that you're willing to make? Generally?

A Generally, you put a much higher discount rate. You know, like if you would do debt at 10 percent and a normal public equity at a 15 percent return, you would do distressed or private equity investing at a 20, 25 percent return expectation to offset the risk and the unknowns.

Q In order to handicap an investment in an unsecured creditor's claim appropriately to reach an informed decision, what type of data would you need to have access to?

MR. MORRIS: Objection to the form of the question. He's not here as an expert. He's here as a fact witness. He should -- he should limit himself to that instead of talking about what investors should be doing.

MR. MCENTIRE: Well, Your Honor, with all due respect, he's here as the former CEO of Highland Capital. He has experience, firsthand knowledge experience, and he also has expertise because of his education, his career, and training.

And again, there's no limitation here under the Rules about what type of information I can elicit from him in this proceeding. This is, whether you call it expert testimony, I call it personal knowledge, but it has some expert aspects to it, but I think that's fair and appropriate.

THE COURT: Well, I think you can ask what kind of data would you rely on, would Highland Capital or entities he's been in charge of rely on, --

MR. MCENTIRE: I understand.

THE COURT: -- but not what would people rely on. So I sustain the objection partially.

MR. MCENTIRE: All right.

BY MR. MCENTIRE:

Q Mr. Dondero, I'll rephrase the question. When you were the chief executive officer of Highland Capital before Mr. Seery took the reins, and you, your company, Highland Capital, was investing in an unsecured creditor's claims, what due diligence, what type of information would you expect your team to explore and investigate?

A Sure. Distressed investment in a trade claim would be among our thickest folders, it would be among our most diligenced items, because you have those three buckets, the value of the assets, again, and the ability and timing of monetization of those as a not strong -- as a weak seller, and then you would have the litigation or claims against those, and then you would have to also have a third section of analysis for the litigation risk of the estate overall.

Q What type of legal analysis or legal due diligence would you have required as the CEO of Highland Capital?

A At Highland, we would have had third-party law firms, in addition to our own legal staff, in addition to our own business professionals, reviewing all the analysis and the assumptions.

Q With regard to a financial analysis, what types of financial due diligence would you have required?
A It would have been a detailed -- a detailed analysis of all the cash flows on the particular underlying investments, and an evaluation and valuation of what those companies or investments were worth.
Q Why is it important to look at the underlying value of the asset?
A Because that -- those are what will be monetized in order to give you a return on the claims or securities that you buy in a distressed situation.

MR. MCENTIRE: Tim, would you please put up Exhibit 4?

MR. MORRIS: Your Honor, I don't mean to be monitoring your time, but we're at the 1:30 --

THE COURT: I was just checking the clock here. Let's do take a break. So, --

MR. MCENTIRE: All right.

MR. MORRIS: Your Honor, can we have an instruction to the witness not to --

THE COURT: Yes.

MR. MORRIS: -- look at his phone and not to confer with anybody? Because we had that incident once before.

THE COURT: Okay. Well, I don't --

THE WITNESS: I don't have my phone.

THE COURT: Okay.

THE WITNESS: My phone's at the front desk.

THE COURT: So, no discussions with your lawyers or -- I guess he doesn't have his phone -- during this break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. So, I really think this will take five minutes, so don't go far.

(Off the record, 1:33 p.m. to 1:47 p.m.)

THE COURT: Okay. We will go back on the record, then, in the Highland matter.

MR. MCENTIRE: I'm just going to grab him right now.

THE COURT: Okay. We are, for the record, waiting on Mr. Dondero to take his place again on the witness stand.

(Pause.)

THE COURT: All right, Mr. Dondero. We're ready for you to resume your testimony.

All right. Mr. McEntire, you may proceed.

MR. MCENTIRE: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MCENTIRE:

Q Mr. Dondero, when we left off, I was just putting up what I requested as Exhibit 4.

MR. MCENTIRE: And Tim, if you can put that back up, please.

BY MR. MCENTIRE:

Q Mr. Dondero, can you identify Exhibit #4, please?
A Yes. These are notes I took contemporaneous with three conversations with guys at Farallon.
Q I didn't quite hear you. Did you say contemporaneous?
A Yes.
Q So, you say with three conversations. Who were the conversations with?
A One was with Raj Patel that was fairly short, and he deflected me to Mike Linn, who was the portfolio manager in charge and had done the transactions.
Q Which transactions?
A The buying of the claim, the Highland claims.
Q All right. And what was your purpose in making these notes?
A We'd been trying nonstop to settle the case for two-plus years. We'd been counseled that it was a Kabuki dance that would just, you know, all settle at the end, and it never quite happened that way. And when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case.

The ownership was initially hidden, but we were able to find out pretty quickly that Farallon was Muck. So I reached out the Farallon guys.
Q All right. And were you ever able at that time to determine who was affiliated with Jessup, the other special-

purpose entity?
A We -- initially, we thought Farallon was all of the entities. We didn't find out about Stonehill -- it was more difficult and they had taken more efforts to hide the ownership in Stonehill. We didn't find out for two more months.
Q So your first conversation was with Mr. Patel?
A Yes.
Q And did you call him?
A Yes.
Q Your first entry, there's a 28 on the left-hand side. What does that 28 refer to, if you recall?
A That was the date, I believe.
Q Do you believe it was May 28th?
A Yes.
Q What makes you believe that?
A That's what it says.
Q Okay. Raj Patel --
THE COURT: Is there a way you can show the words that are cut off?
MR. MCENTIRE: On this particular one, I can't, Your Honor. We tried, but we can't. No.
THE COURT: If I look in the notebook, can I see it?
MR. MCENTIRE: I don't think so. I think this is -- what you see is exactly what's in the notebook. It's the same

document. This is how -- how we -- this is how we have it.
BY MR. MCENTIRE:
Q Mr. Patel. Who is Mr. Patel?
A He's Mike Linn's boss. He's head of -- I believe head of credit at Farallon.
Q Okay. And Farallon is based where, if you know?
A San Francisco.
Q And what kind of company is Farallon, if you know?
A They -- they look a lot like Highland. Well, they do real estate. They do hedge funds. They do -- they don't do as many 40 Act or retail funds, but they're -- they're an investor.
Q Mr. Patel. What did he tell you during this phone call?
A That he bought it because Seery told him to buy it and they had made money with Seery before.
Q All right. And how long did the call last?
A Not long.
Q Okay. You said he referred you to Mr. -- who was the person?
A To Mike Linn.
Q Who is Mike Linn?
A Mike Linn is a portfolio manager that works for Mr. Patel.
Q And did you call Mr. Linn?
A Yes.
Q All right. The notes here, do these reflect several

conversations?
A The first one reflects a conversation with Raj Patel, and then the rest of it reflects two conversations with Mike Linn.
Q All right. Where does the first conversation with Mike Linn start and where does it end?
A It ends -- it begins at the 50, 70 cents. We knew that they had -- that the claims had traded around 50 cents. And I said we'd be willing to pay 70 cents. We'd like to prevent the $5 million-a-month burn. We'd like to buy your claims.
Q Why 70 cents? What was -- what was that all about?
A I was trying to give them a compelling premium that was still less than I had offered the UCC three months earlier.
Q And so you have: Not compelling, Class 8. What does that mean?
A He said that was -- he just said 70 cents wasn't compelling.
Q There's a reference to: Asked what would be compelling. Was that a question you asked him?
A Yes.
Q And what was his response?
A He said he had no offer. And he -- we had heard he paid 50 cents and I offered him 70 cents and then -- but he was clear to me that he wouldn't tell me what he paid. And so the next time I called him I -- I -- instead of just making it cents on the dollar, I said I'd pay 130 percent of whatever he

did pay. You don't have to tell me what you paid, but I'll pay you 30 percent more than you paid, you know, a couple months ago. And -- or we thought they notified the Court when they just bought it, but they had actually negotiated buying it back in February. January or February. So --

Q Who told you that they bought it in February or March time frame?

A He did.

Q Okay. Was this during the first or the second phone --

MR. MORRIS: I apologize for interrupting. Who's the "he"?

MR. MCENTIRE: Mike Linn.

THE WITNESS: Mike Linn.

MR. MORRIS: Thank you so much.

MR. MCENTIRE: I'll make sure the record --

BY MR. MCENTIRE:

Q Mike Linn --

A Yes.

Q -- told you that Farallon had bought their interest in the claims back in the February or March time frame?

A Yes.

Q All right. Bought assets with claims. What does that refer to?

A He said it wasn't compelling because he said Seery told him it would be worth a lot more. He -- he confirmed what Raj

said, that -- I said, do you realize the estate is spending $5 million a month on legal fees? That, you know, you should want to sell this thing. And he said Seery told him it was worth a lot more and there were claims and litigation beyond the asset value.

Q You offered him 40 to 50 percent premium. What is that?

A That's what the 70 cents on the 50 cents represents. And then I changed the dialogue to I'll pay you 130 percent of whatever your cost was. And he said, not compelling. And then I, both -- both calls, I pressed him, what price would he offer at? And he said he had no offer, he wasn't willing to sell.

Q The 130 percent of cost, not compelling, was that in the second or the third call with Mr. Linn?

A It was at my third and final call with Farallon. My second call with Mike Linn was the 130 percent of cost.

Q And he said not compelling? You put it in quotation marks?

A Yep.

Q And then you said, no counter. What does that mean?

A He wouldn't -- he wouldn't give an offer, he wouldn't give a price at which he would sell.

Q What did Mike Linn tell you, in effect, with regard to his due diligence that Farallon had undertaken?

A When I -- when I told him about the risks and the

litigation and the burn, he said he wasn't following the case, he wasn't aware of it, he was depending on Jim Seery.

Q What, if anything, did Michael Linn tell you about MGM?

A That was more the initial Raj Patel call, where he said we bought it because he was very optimistic regarding MGM.

Q Okay. Did you have any understanding when he first got his optimism about MGM?

A No. He just said that's why they had bought it initially, they were very optimistic about MGM.

Q That's why they had bought it initially?

A Yes.

Q And they had bought it initially in the February-March time frame?

A Yes.

Q And that -- would you -- does that predate the public disclosure of the MGM sale to Amazon?

A Yes.

Q Substantially by a couple of months?

A Yes.

Q I'd like to turn your attention now to a different topic.

MR. MCENTIRE: And Tim, if you could pull up Exhibit 8, please.

I believe this document is already in evidence, Your Honor.

THE COURT: 8 is?

MR. MCENTIRE: Oh, by the way, I offer Exhibit 4 into evidence.

BY MR. MCENTIRE:

Q Let me ask you a couple quick questions.

THE COURT: Is there an objection?

MR. MORRIS: Nope.

THE COURT: Okay. 4 is admitted.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

BY MR. MCENTIRE:

Q Exhibit 8.

MR. MORRIS: I apologize, Your Honor. Just one caveat. It's not for the truth of the matter asserted; it's for what his impressions were at the time.

MR. MCENTIRE: Well, --

MR. MORRIS: This is what he wrote down. I don't --

MR. MCENTIRE: I'm offering it for the truth of the matter asserted.

MR. MORRIS: Okay. And I object to that extent. This --

MR. MCENTIRE: Let me --

MR. MORRIS: Can I *voir dire*? Can I *voir dire*? May I do --

MR. MCENTIRE: May I finish my statement that I was --

THE COURT: Let him finish, and then --

MR. MCENTIRE: Thank you.

THE COURT: -- you can.

MR. MCENTIRE: I am offering it for the truth of the matter asserted because these are documents that were prepared contemporaneously, it's an exception to the hearsay rule and reflects admissions of a -- of an adverse party. Admissions that are adverse to their interests. Declarations of interest adverse to their interest and admissions of an adverse party contemporaneously recorded. And so that's why I'm offering it.

MR. MORRIS: For all purposes?

THE COURT: Okay. Let me have you point me to the exact hearsay exception. I understand this hearsay exception you're arguing for the hearsay within the hearsay, the party opponent exception. But it's technically hearsay of Mr. Dondero, even though he's here on the stand.

MR. MCENTIRE: Well, I could lay a foundation, then.

BY MR. MCENTIRE:

Q Mr. Dondero, --

THE COURT: Well, no. I'm asking for what your --

MR. MCENTIRE: It's --

THE COURT: -- rule reference is.

MR. MCENTIRE: I don't have the Rules with me right this second. It's 803(1) --

(Discussion.)

MR. MCENTIRE: All right. Well, it's -- it's admissible under several categories. It's not hearsay because it's an admission of a party opponent. It's also an admission under 803(1), present sense impression. It's also admissible --

THE COURT: So you say it's Mr. Dondero's statement describing or explaining an event --

MR. MCENTIRE: Yes.

THE COURT: -- or admission made while or immediately after the declarant perceived it?

MR. MCENTIRE: Yes. It's also a record of a regularly-conducted activity, which is 803(6). And I think it's also not technically hearsay because it's also an admission of a party. So, this --

THE COURT: Well, that's the hearsay within the hearsay.

MR. MORRIS: Yeah.

THE COURT: But I'm -- I'm --

MR. MORRIS: That can't possibly be right. I can't go back to my hotel right now and write down that he told me that he did a bad thing and come in here tomorrow and say he admitted he did a bad thing because it's in my notes.

MR. MCENTIRE: Well, --

MR. MORRIS: That's can't possibly be the law.

MR. MCENTIRE: Well, --

MR. MORRIS: That's not the law.

MR. MCENTIRE: There are two hearsay issues here. One is whether this is a business record or otherwise qualifies as an exception to the hearsay rule, and then there's an internal hearsay issue of whether or not what Mr. Patel and Mr. --

THE COURT: You haven't established the business record exception. Okay?

MR. MCENTIRE: I'm prepared to lay the foundation right this second. At this moment.

THE COURT: You may proceed.

BY MR. MCENTIRE:

Q Mr. Dondero, is this a document that was generated by you in the ordinary course of your business?

A Yes.

Q Did you have personal knowledge when you recorded this document?

A Yes.

Q You personally recorded this document, correct?

A Yes.

Q And you have had custody of this document. Correct?

A Yes.

Q And this is --

MR. MCENTIRE: That's a -- that's a business record,

Your Honor.

MR. MORRIS: May I, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Where's the document now? How come it's -- how come it's cut off?

A I don't know.

Q Do you have the document today? How come we're looking at a document that's cut off?

A I'm sure we have it somewhere. I don't have it.

MR. MORRIS: So, number one, Your Honor, we don't have the actual document. We have a partial document.

Number two, let's talk about it for a second.

BY MR. MORRIS:

Q You say that you do this in the ordinary course of business. What's the purpose of taking these notes?

A When I'm starting negotiation with somebody new on something complicated and I don't know what their concerns or rationale is going to be, I take little notes like this.

Q And is it -- is it the purpose of it to capture the important things that are going on in the conversation?

A So I know next time how to address it differently, you know.

Q That's not my question. My question is, is the purpose of taking notes so that you have a written record of the important points that you discussed?
A Yes, so I know how to address it the next time.
Q Okay. And among the important points that you never put down on these notes was the letters MGM. Is that correct?
A Correct.
Q Okay. And you never put down here that Michael Linn told you he wasn't following the case, correct?
A No, I did not.
Q Okay.
A But it was --
Q And --
A Yeah. But I --
Q That --

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

MR. MCENTIRE: (faintly) This is *voir dire* of the witness for a business record exception.

MR. MORRIS: No, because --

THE COURT: Overruled.

MR. MORRIS: Thank you.

BY MR. MORRIS:
Q Mr. Patel wouldn't tell you how much he paid and that's why you didn't write it down, right?
A Mr. Patel told me he bought it because of Seery. My

conversation was very short with him. That was one of the few things he said. Linn said he wouldn't sell it because he didn't find it compelling.

Q Okay.

A And Linn was the one who wouldn't tell me --

Q Okay.

A -- the price.

Q But -- but even though you took these notes to write down things that you thought were important, you didn't write down MGM. Correct?

A Yes.

Q And you didn't write down that anybody was very optimistic about MGM. Correct?

A No, I did not.

Q And you didn't write down that Mr. Linn told you he wasn't following the case. Correct?

A Well, he said the same thing Patel said about he bought it because of Seery. He did confirm that. I didn't see any reason to write that again.

Q You didn't -- you never wrote it down. Not once. Not -- there's nothing about again, right. You never wrote down that --

A No, I did write --

Q -- anybody ever told you they weren't following the case. Correct?

A Correct.
Q Okay.
A But I wrote down that he bought it because of Seery.
Q Okay.

MR. MORRIS: Your Honor, no objection. It can go in.

MR. MCENTIRE: Okay.

THE COURT: Wait. Did you just say no objections?

MR. MORRIS: Except -- except for the hearsay on hearsay. It can't possibly be an admission. It's his -- it's his notes. This is what he wrote. It can come in for that purpose. It's -- it's a -- that's what he's testified to, and I can't object to that. But it can't possibly come in as an admission against Farallon.

MR. MCENTIRE: Well, I disagree.

MR. MORRIS: That's the point.

MR. MCENTIRE: Well, first of all, I disagree. This is otherwise admissible, and it can come. I think that's really, Your Honor, that's really the weight it's going to be given. It comes in. He's not making an objection to its admissibility. And if he wants to argue the weight of the document, that's a different issue.

MR. STANCIL: Your Honor, if I may.

THE COURT: You may.

MR. STANCIL: The second layer of hearsay goes to whether this is a statement by Farallon. It is a statement by

Mr. Dondero of what he heard, what he says he heard Farallon say. 801(d) refers to, when they're talking about an opposing party statement, made by the party, not made by a listener who says he heard the party. This is classic hearsay within hearsay. It's not admissible for that purpose.

THE COURT: Okay. I sustain the objection, and -- but I'm still struggling to understand what the Respondents have agreed to. Because --

MR. MORRIS: That -- that this is what he claims to have written down. I mean, right? So, so --

THE COURT: Okay.

MR. MORRIS: -- a present sense impression.

THE COURT: So, it is admitted as Mr. Dondero's present sense impression, but it's not admitted as to the truth of anything that Claims Purchasers may have said.

MR. MORRIS: And -- and the --

THE COURT: That's what you're saying?

MR. MORRIS: Yes. And the most important thing is that he's testified that the purpose of the notes was to capture the things that were important that he was told. And we've established what he wasn't told.

MR. MCENTIRE: Okay. I believe the document is in evidence, Your Honor.

THE COURT: Exhibit 4 is in evidence. But, again, there's no admission in here as to what Claims Purchasers

testified as to.

MR. MCENTIRE: Well, they haven't testified yet because --

THE COURT: This is what he --

THE DEFENDANT: I understand. I understand.

THE COURT: -- he says he remembers.

MR. MCENTIRE: Okay. So, --

THE COURT: It's sort of an --

MR. STANCIL: Your Honor, just so we're clear for our record, this is not admitted for the truth of what Farallon is purported to have said.

MR. MCENTIRE: Correct.

THE COURT: Correct.

MR. MCENTIRE: This --

MR. STANCIL: Thank you.

MR. MCENTIRE: This is offered for the truth of what Mr. -- Mr. Dondero recalls them saying.

THE COURT: Okay.

MR. MCENTIRE: In part.

THE COURT: I think -- I think we're on the same page now. I think. I think.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

MR. MCENTIRE: All right. May I proceed, Your Honor?

THE COURT: You may.

MR. MCENTIRE: Can you please put up Exhibit 8, please? And I believe this document has been put into evidence --

THE COURT: It is.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero, this document is a -- part of a -- the Court's docket. It was filed on February 1, 2021, if you could go to the top upper banner. It's Debtors' Notice of Filing of Plan Supplement of the Fifth Amended Plan of Reorganization of Highland Capital Management, as Modified.

Do you see that?

A Yes.

Q I'll direct your attention, --

MR. MCENTIRE: If you could go to Page 4, please, for me, Tim.

BY MR. MCENTIRE:

Q Page 4 has a schedule, a plan analysis and a liquidation analysis. Do you see that?

A Yes.

Q All right. For Class 8, what does it identify that is being projected for distributions to the general unsecured claims for Class 8?

A 71.3 percent.

Q What percentage is being identified that will be

distributed to Class 9?
A 9, no distribution.
Q No distribution? All right. Mr. Dondero, in Paragraph -- I'm going to give you a piece of paper.
MR. MCENTIRE: Can you just give me a piece of paper real quick?
BY MR. MCENTIRE:
Q I'm handing you a piece of paper and I'm --
A Okay. Thank you.
Q Mr. Dondero, in our complaint in this case, the proposed complaint in this case, we allege that Class 8 had a total of $270 million, the claims that were purchased by Farallon and Stonehill had a face value in Class 8 of $270 million. Would you write that number down?
And assuming that this was public information that was available in February of 2021 at 71.32 percent, --
MR. MORRIS: Objection, Your Honor. That's an assumption not in evidence. He hasn't laid a foundation for what was available in February in 2021.
BY MR. MCENTIRE:
Q Mr. Dondero, according to --
THE COURT: Wait. Are you going to respond, or are you just going to --
MR. MCENTIRE: I'll rephrase the question.
THE COURT: -- rephrase? Okay.

BY MR. MCENTIRE:

Q According to the document that is identified as Exhibit #8 that says that 71.32 percent is the anticipated projected payout on Class 8 claims, what is 71.32 percent of the face value of the claims that were purchased?

A About $192 million.

Q $192 million? And assuming for a moment that, as alleged by Hunter Mountain in this case, that $163 million was actually used to purchase the Class 8 claims, what is the difference?

A About $30 million.

Q A little less than that, isn't it? Or is the number --

A Yeah. $28 million or whatever.

Q $28 million? And based upon your years of experience in running Highland Capital, being involved in the purchase of unsecured claims, being involved in investigating and acquiring distressed assets, that return over a two-year period, is that the kind of return that a hedge fund would typically -- you would expect to receive?

MR. MORRIS: I just want to make sure that -- because the question changed a little bit in the middle. If he wants to ask him if he would have made the investment, that's fine. But he should not be permitted to testify as to what any other investor, including the ones who purchased these claims, would have done. Every -- there's different risk profiles. He can

testify to whatever he wants about himself.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Go ahead. Based upon your experience at Highland Capital, would Highland Capital have ever acquired those claims based upon that kind of return over two years? For a distressed asset such as this?

A No.

Q Why not?

A It's below a debt level return that you could get on high-rated assets with certainty. It's --

Q What do you mean by it's below -- below a debt return that you could get on collateralized assets? What do you mean by that?

A I think in this case the debt that the Debtor put in place paid 12, 13 percent and was triple secured or whatever. So no one would buy the residual claims for an 8 percent compounded, whatever that $28 million works out to.

MR. MORRIS: I move to strike, Your Honor. He shouldn't be talking about or testifying to what other people might do.

THE WITNESS: Well, we --

THE COURT: This is --

THE WITNESS: We would never have done that.

THE COURT: This is --

MR. MCENTIRE: He would not have.

THE COURT: -- Highland, not nobody. Okay.

BY MR. MCENTIRE:

Q Mr. Dondero, and what is it about the fact that these claims are not collateralized that impacts the decision-makers, from your perspective?

A You have all the risk that the $205 million of expenses this estate has currently paid grows to $300 or $400 million. You know, you have the risk that other litigation regarding Seery violating the Advisers Act --

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

THE WITNESS: -- results in --

THE COURT: Sustained.

THE WITNESS: -- expenses.

BY MR. MCENTIRE:

Q Just respond to my question, sir. What does the fact about not being collateralized, how does that impact the decision-maker's --

A Well, I was trying to answer it. You just have all kinds of residual risk of bad acts that have happened at the estate or expenses increasing or whatever.

MR. MORRIS: I move to strike the phrase "bad acts," Your Honor.

THE COURT: Overruled.

BY MR. MCENTIRE:

Q What did you mean by that? What did you mean by "bad acts"?
A We've highlighted it in a lot of complaints. There's been several violations of the Advisers Act.
MR. MORRIS: Move to strike, Your Honor. It's a legal conclusion.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q Mr. Dondero, are you familiar with an entity known as NHF?
A Yes.
Q What is NHF?
A A NexPoint hedge fund. It was a closed-in fund that we manage still to this day at NexPoint. The name has changed to NXDT.
Q Was NHF publicly traded?
A It -- yeah, it's a publicly-traded equity. It's a closed-in fund, technically, but it's a publicly-traded security.
Q What -- what is your affiliation with NHF?
A I'm the portfolio manager.
Q And, again, what are your responsibilities as the portfolio manager?
A To optimize the portfolio and hopefully exceed investor expectations.
Q Have you become aware that Stonehill was purchasing MGM stock in the first quarter of 2021? And NHF?

A Yes. We believe -- we're able to demonstrate from Bloomberg records, on the Bloomberg terminal, they show up as holders and purchasers in the -- in the first few months of 2021.

Q What magnitude?

A I think it was one of their top equity positions. It was about six million bucks.

MR. MCENTIRE: Can you put up the chart? This is for demonstrative purposes only.

I'm not offering this chart into evidence, Your Honor. It's simply a demonstration. Or a demonstrative.

MR. MORRIS: Your Honor, there's no such thing.

MR. MCENTIRE: There is.

MR. MORRIS: A demonstrative has to be based on evidence. A demonstrative is supposed to summarize evidence. You don't put up a demonstrative until --

THE COURT: All right. What's your response to that?

MR. MCENTIRE: That I'm about to walk through some points where he can establish as a point of evidence, and then we can talk about it. Demonstratives, demonstratives are used all the time, Your Honor.

MR. MORRIS: It's to --

THE COURT: Well, they summarize evidence.

MR. MORRIS: It's to summarize evidence.

THE COURT: Yes. So, --

MR. MCENTIRE: Well, this is --

THE COURT: -- you can elicit the evidence, and then if this chart seems to summarize whatever he testifies as to, then --

MR. MCENTIRE: All right.

THE COURT: -- then I think maybe you can put it up.

MR. MCENTIRE: Mr. -- you can take it down, Tim.

BY MR. MCENTIRE:

Q Mr. Dondero, do you have an understanding of how much total distributions have been paid to date in the Highland bankruptcy?

A I believe the Class 8 -- the 1 through 7 was only about $10 million. I believe Class 8 got $260 or $270 million so far.

Q All right. And do you have an understanding of what the total amount of expenses are?

A Total expenses paid to date was $203 million. $205 million.

Q So the -- the -- there's a rough approximation between the professional expenses and the actual all proofs of claim; is that correct?

A There is, yeah, a ratio, and -- yes.

Q The total cash flow, if you add those two together, what are they? What are they approximately?

A $470 million.

Q $470 million? And do you understand that the -- that the Reorganized Debtor and the Claimant Trust would have more than sufficient assets to reach Class 10 where Hunter Mountain is currently located, even setting aside the claims against you?
A Correct. There's $57 million of cash on the balance sheet, net of a couple million today, I guess. And then there's $100 million of other assets.

MR. MCENTIRE: Reserve the rest of my questions. Reserve the rest of my questions, Your Honor.

THE COURT: Okay. Pass the witness.

MR. MCENTIRE: Could I have my time estimate?

THE COURT: Yes. Caroline?

THE CLERK: (faintly) As of right now, we are at 81 minutes, so --

MR. MCENTIRE: Thank you.

THE COURT: That was 81 minutes total?

THE CLERK: Yes.

THE COURT: Okay.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.
A Good to see you.
Q My pleasure. Do you know an attorney named Ronak

(phonetic) Patel?
A Is that Rakhee that they call --
Q Could be. Do you know an attorney named Rakhee Patel?
A There was a Rakhee Patel, I believe, early in the *Acis* case.
Q Let me try --
A I'm not -- I've never met her.
Q Let me try this differently.
A Okay.
Q Did you ever meet with the Texas State Securities Board?
A No.
Q Did anybody acting on your behalf ever file a complaint with the Texas State Securities Board?
A No.
Q Do you know if anybody's filed a complaint with the Texas State Securities Board? About Highland?
A I believe you covered it earlier. Mark Patrick.
Q Mark Patrick what?
A I guess he did, or Hunter Mountain did, or the DAF did. I don't -- I don't know.
Q Did you ever speak with Mark Patrick about a TSSB investigation of Highland?
A No.
Q Okay. Why do you think Mark Patrick knows about the TSSB investigation of Highland?

MR. MCENTIRE: Objection to form. Calls for speculation. He's just established that he's never --

THE WITNESS: I don't know.

MR. MCENTIRE: -- talked to Mark Patrick.

MR. MORRIS: Okay.

THE COURT: Okay. Sustained.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Have you ever seen the draft Hunter Mountain complaint in this case?

A No.

Q Okay. I think you testified a moment ago that Amazon had hit MGM's price by December 17th. Do I have that right?

A Yes.

Q Okay. Then how come you didn't say that in your email to Mr. Seery?

A Your best practices and typical practices, when you put it on the restricted list, is to just give as little information as possible so that the inside information isn't promulgated specifically throughout the organization and leaked --

Q So, --

A -- throughout the organization.

Q So, even though your intent was to convey information to Mr. Seery, you didn't actually tell him the truth, right? You didn't tell him that Amazon had actually hit the stock price.

Right?
A I wouldn't characterize it that way.
Q Okay. In fact, all you told him was that they were interested. Isn't that right?
A I wasn't telling him anything. I was telling Compliance, as an investment professional, that it needed to be on the restricted list because we were in possession of material nonpublic information regarding a merger that was going to go through shortly. Or in the next few months.
Q Is it your testimony that, as of December 17th, Amazon had made an offer that was acceptable to MGM?
A Yeah, we were going into -- that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with them.
Q Okay. I think you have a binder there of our exhibits. If you can go to #11.
A Which one?
MR. MORRIS: May I approach?
THE WITNESS: Sure.
(Pause.)
BY MR. MORRIS:
Q That's your email, sir, right?
A Yes.
Q Okay. It doesn't say anything about Amazon hitting the price, right?

A It doesn't need to.
Q In fact, it still mentions Apple, doesn't it? Why did you feel the need to mention Apple if Amazon had already hit the price?
A The only way you generally get something done at attractive levels in business is if two people are interested.
Q But why weren't you -- why were you creating a story for the Compliance Department when the whole idea was to be transparent so they would understand what was happening? Why would you create a story that differed from the facts?
A It didn't differ from the facts, and it's not a story. It's a, we have material nonpublic information. Please put this on the restricted list. And --
Q But that -- but you said Amazon and Apple are actively diligencing and they're in the data room. Do you see that?
A That's true.
Q So, even though -- you know what, I'll move on. But this -- this doesn't say what you testified to earlier, that Apple hit the -- that Amazon hit the price. Right? Can we just agree on that?
A Well, agree that it doesn't have to and it's not supposed to.
MR. MORRIS: I move to strike. I just want --
THE COURT: Sustained.
BY MR. MORRIS:

Q -- you to -- I want you to just work with me here. You did not tell the Compliance Department that Apple -- that Amazon had hit the strike price. Right? Isn't that correct? That's not what this email says?

A The -- you can pull up a hundred of these type emails. They're not specific.

MR. MORRIS: I'm going to move to strike and I'm just going to ask you, --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- because you testified to one thing, and I just want to make clear that you told the Compliance Department something different. Can we just agree on that?

MR. MCENTIRE: Well, Your Honor, may I respond to his motions to strike? I think he's becoming argumentative.

THE COURT: Could you speak into the mic, --

MR. MCENTIRE: I can.

THE COURT: -- please.

THE COURT: He's becoming argumentative. And I think it's very clear that, if he asks a question, the witness has a right to respond. I think his answers are totally responsive. And I don't think anything should be struck.

THE COURT: Okay. Your question was you didn't put in there anything about it hit the strike price --

MR. MORRIS: He didn't --

THE COURT: -- or whatever?

MR. MORRIS: He didn't -- he didn't tell the Compliance Department what he just testified to. In fact, he told the Compliance Department something very different. That's all I'm asking.

THE COURT: And I think that's just a yes or no.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Yes or no? You told the Compliance Department something different than what was actually happening?

A That's not true.

Q Oh.

A Exactly what was here, what was happening. I didn't give more detail, which is more hearsay.

Q Okay. If somebody was filing -- following the Highland bankruptcy, they would have known that MGM was very important, right?

A You'd have to show me where. I don't -- I don't see it in any of the bankruptcy --

Q You don't think that that's true?

A I didn't see it in any of the public filings.

Q Do you remember we were here two years ago on this very day, June 8, 2021, for the second contempt hearing? You sat in that very witness box during the second contempt hearing? Remember that? That was two years ago.

A I remember sitting in the box. What are you asking?
Q And do you remember that that was just a few days after MGM had announced its deal with Amazon?
A I -- I don't remember -- I -- was that the day the judge was hopeful that would lead to a resolution of the case?
Q Exactly. So, --
A Okay.
Q -- Judge Jernigan certainly knew that MGM was important. Right?
A Yes.
Q And she's a bankruptcy judge, right?
A Yes.
Q And she was overseeing the bankruptcy case, right? Correct?
A Yes.
Q And the very first thing when she walked in the door two years ago on this day was, oh my goodness, MGM, they have a deal, maybe we can finally get to a settlement. Right?
A And I wish she had pushed on that.
Q Do you --
A And I remember you guys dismissing it.
Q Do you think she had material nonpublic inside information?
A No, I don't think so.
Q She probably learned it in the bankruptcy case, right?

A Yeah.
Q Okay. Do you believe Mr. Seery sold any MGM securities between the day you sent your email and the day the Amazon deal was announced on May 26th?
A I don't know.
Q Do you -- so you have no knowledge? Let's do this a different way. You have no basis to say that Mr. Seery sold any MGM securities between the moment you sent this email on December 17th and the day the Amazon deal was announced on May 26th. Correct?
A I'm sorry. Just to clarify, you're saying sold, not bought, right? You're not asking me if --
Q I'll do either way.
A Okay.
Q Fair point.
A Sure.
Q Very fair point.
A Okay.
Q Do you believe that Mr. Seery engaged in any transactions of MGM securities between those two relevant data points?
A Yes.
Q Okay. What do you think he did?
A The HarbourVest transaction.
Q Okay. So, you learned about the HarbourVest transaction when?

A When it was filed.
Q And that was on December 23rd. Do you remember that?
A Yes.
Q It was just less than a week after you sent your email, right?
A Yes.
Q And do you remember that you filed an objection to the HarbourVest settlement?
A Yes.
Q And you're the one who gave Mr. Seery this material nonpublic inside information, right?
A Yes.
Q Did you object to the HarbourVest settlement on the basis that Mr. Seery was engaging in insider trading?
A Not then, I don't think. I believe --
Q You didn't, right? Even though it was happening at the exact same moment, the very -- within a week of you giving him this information. He's announcing that he's doing this settlement and you don't say a word. Isn't that right?
A Because I delegated the responsibility to Compliance by notifying them of material nonpublic information, and Compliance should hold the organization accountable. Compliance is separate and discrete from management. Compliance reports to the SEC.
Q You filed a 15-page objection to the settlement, didn't

you?
A I don't -- I don't know.
Q Did you tell Judge Jernigan that Mr. Seery was doing bad?
A Not then. I think a month later, two months later.
Q Even though you knew what was happening, you didn't say anything, right?
A I -- I'm not responsible for all the filings. I --
Q Even though it's under your name?
A Correct.
Q How about -- how about CLO Holdco? Did CLO Holdco file an objection to the HarbourVest settlement?
A I -- I don't know which entities did, but it -- whatever entities that were in control that could did, eventually, when they found out, you know, and -- but did -- did they, within a week or contemporaneously? No. It was right around the holidays. A lot of people weren't paying attention. You guys were trying to rush the HarbourVest thing through.
Q Sir, CLO Holdco filed an objection, claiming that it was entitled to purchase the HarbourVest interests in HCLOF because it had a right of first refusal, right? Isn't that right?
A Okay. I -- what ultimately governs the --
Q Isn't that right?
A I don't -- okay.
Q It's really just yes or no.

A I don't know.
Q If you don't remember, that's fine.
A I don't remember, yeah.
MR. MCENTIRE: Your Honor, would he please give the witness an opportunity to answer? He's interrupted three times in less than five seconds. Give the witness an opportunity to respond.
MR. MORRIS: This is real easy stuff.
THE COURT: Okay.
MR. MORRIS: I'm trying to cross him here.
MR. MCENTIRE: Your Honor, with all due respect, he's making it very difficult because he's being very aggressive --
MR. MORRIS: Nah.
MR. MCENTIRE: -- and he's interrupting the witness.
MR. MORRIS: I would never.
THE COURT: Okay. I don't feel the need to do that right now, but I will -- I will consider your request.
THE WITNESS: Can I give a complete answer to his last question, or one that I'd like to be my answer on the record?
THE COURT: Go ahead.
THE WITNESS: The governing responsibility as a registered investment advisor is you're not allowed to buy back from investors fund interests or investments unless you offer it to everybody else, in writing, in that fund first.

That's the Investment Advisers Act as I understand it, and that is what was improper in the HarbourVest transaction. I mean, besides the fact that the pricing was wrong, they misled HarbourVest. And I know HarbourVest hasn't complained, but just because your investors don't complain doesn't mean you can rip them off.

MR. MORRIS: I'd really move to strike the entirety of the answer, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q Mr. Dondero, HC --

A I'm not going to -- I'm not answering any more questions unless I can answer that question with that answer, --

Q Mr. Dondero, do you --

A -- because I believe it's responsive.

Q Do you remember that CLO Holdco withdrew their objection?

A I --

Q To the HarbourVest settlement?

A I don't remember.

Q Do you remember that's really when Grant Scott left the scene?

A I don't --

Q He thought it was inappropriate for them to withdraw, right?

A I don't remember all the details. I know they made some

mistakes, and there's a tolling agreement against Kane's (phonetic) firm for making mistakes, and, you know, whatever. But I -- I don't remember all the details.

Q And a couple of months later, you conspired with Mr. Patrick to try to sue Mr. Seery in order to try to get that very same interest in HCLOF, right?

MR. MCENTIRE: Your Honor, I have to object. There's no foundation and it's also highly argumentative and I move to object. That's a -- that's a question asked in bad faith.

THE WITNESS: I deny any conspiring.

MR. MORRIS: Okay.

THE COURT: Sustained.

BY MR. MORRIS:

Q In April, Mr. Patrick filed a lawsuit on behalf of CLO Holdco a couple of weeks after getting appointed as the head of CLO Holdco and the DAF about the HarbourVest settlement. Isn't that right?

A I believe so.

Q Okay. And you worked with him on that, right?

A I -- I did not work with him on that. I was very just tangentially aware.

Q Okay.

MR. MORRIS: I'm just going to refer the Court -- I'm going to move for the admission into evidence of the second contempt order.

THE COURT: Exhibit what?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: You know what, I don't know that I have it on the list. I'm just going to ask the Court to take judicial notice. We had a hearing two years ago to this day, and the Court found in the order that it entered at the conclusion of that hearing that Mr. Patrick had abdicated his responsibility to Mr. Seery. It's one of the reasons why Mr. Seery wasn't held in contempt of Court. And I'd like -- I'd like Counsel to address it now.

MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't you?

MR. MORRIS: Oh, sorry. I said Seery. I meant Dondero.

MR. MCENTIRE: (faintly) Also, I believe it's entirely irrelevant. Judicial -- taking judicial --

THE COURT: Would you speak in the microphone, please?

MR. MCENTIRE: I'm sorry. Taking judicial notice of something that is utterly irrelevant is not necessary, not appropriate. What this Court did two years ago roughly to the day -- and I assume he's correct -- has no bearing on anything before the Court today. Nothing. This has zero connection, nexus, under any analysis, any fair scrutiny, dealing with the

colorability of the claim that Hunter Mountain, who was not involved in those proceedings, is trying to advance here. And it would be -- it would be improper for this Court to even take it under judicial notice.

THE COURT: Okay. Response?

MR. MORRIS: Can I respond?

THE COURT: Uh-huh.

MR. MORRIS: Okay. So, Your Honor, I'm going to move for the introduction into evidence of Exhibit 45. It is the Charitable DAF complaint that was filed in the federal district court on April 12, 2021, under the direction of Mark Patrick, who today stands here as the representative of Hunter Mountain.

This was the complaint, if Your Honor will recall, that they tried to amend and we had a hearing here about the circumstances, because that amendment was going to name Mr. Seery personally, in violation of the gatekeeper order. Right?

THE COURT: Uh-huh.

MR. MORRIS: And so it is all tied together. If you go to Paragraph 77 of this exhibit, it says, HCLOF holds equity in MGM Studio. This is the exact same transaction, right? So, so Mr. Dondero says, I gave Mr. Seery inside information, he violated all of these things in the HarbourVest transaction, even though he didn't say a word

then, and here, while it's still on the restricted list, before the Amazon deal is announced, they're actually in court saying that they should be entitled to acquire that same asset that Mr. Seery supposedly acquired improperly. He wants it for himself.

I mean, are you kidding me? It's not relevant?

THE COURT: I overrule the relevance objection. It's admitted.

MR. MORRIS: Thank you. And 45 is admitted, Your Honor?

THE COURT: 45 is admitted.

MR. MORRIS: Okay.

(Debtors' Exhibit 45 is received into evidence.)

MR. MCENTIRE: Just, Your Honor, I was identifying my objection in connection with his original request that you take something under --

THE COURT: Would you speak in the microphone? Again, we --

MR. MCENTIRE: Yes. My original objection was addressing his request of you, Your Honor, to take something under judicial notice. I want to make sure my objection is also lodged with regard to Exhibit 45, which I understand you've overruled.

THE COURT: Correct.

MR. MCENTIRE: Okay.

THE COURT: It is so noted.

MR. MORRIS: Okay.

THE COURT: You've objected and I've admitted it.

MR. MORRIS: And I think I've said this already, but the reason that we're requesting the Court take judicial notice of its order on the second contempt proceeding is because it shows that Mr. Dondero and Mr. Patrick worked together, in violation of the gatekeeper, to try to suit Mr. Seery to obtain the interest in HCLOF that he is sitting here today saying somehow that Mr. Seery wrongfully acquired, even though he didn't say a word at the time.

THE COURT: Okay. So now we're talking about not Exhibit 45 --

MR. MORRIS: Yes.

THE COURT: -- but the order that was entered --

MR. MORRIS: Correct.

THE COURT: -- regarding the filing of Exhibit 45?

MR. MORRIS: Exactly.

THE COURT: Someone is going to need to give me a docket entry number before we're done here.

MR. MORRIS: Okay.

THE COURT: I can and will take judicial notice of that, but I need to have it --

MR. MCENTIRE: So I assume, for the record, my objection is overruled?

THE COURT: Your objection is overruled.

MR. MCENTIRE: Thank you.

MR. MORRIS: All right.

BY MR. MORRIS:

Q You mentioned something about, I think, was it NXDT or NHF?

A Yes.

Q And just let me see if I can do it this way. Right? So there used to be a fund known as the NexPoint Strategic Opportunities Fund, right?

A Yes.

Q Okay. And in 2020 that was a closed-in fund. Correct?

A Yes.

Q And it traded under the ticker symbol NHF, correct?

A Yes.

Q And then late in 2021 the name of the fund was changed to NexPoint Diversified Real Estate Trust, correct?

A Yes.

Q And the ticker symbol changed from NHF to NXDT, correct?

A Yes.

Q And then it became a REIT the following year, right?

A Yes.

Q And I'm just going to refer to these letters as the Fund; is that fair?

A That's fine.

Q For purposes of these questions. And you were the Fund's portfolio manager, the president, the principal executive officer, correct?
A Yes.
Q And another entity that you controlled, NexPoint Advisors, provided advisory services to the Fund, correct?
A Yes.
Q And you controlled NexPoint Advisors at all times, correct?
A Yes.
Q Okay. And the Fund was publicly traded, right?
A Yes.
Q And the Fund owned shares of MGM at the end of 19 -- at the end of 2020, correct?
A Yes.
Q In fact, as of December 2020, MGM was one of the Fund's ten largest holdings, with -- valued at over $25 million. Isn't that right?
A Yes.
Q And by the end of 2021, MGM was the Fund's fifth largest holding, with assets -- with a value of over $40 million. Correct?
A Yes.
Q And the Fund also held MGM common stock indirectly; isn't that right?

A Yes.
Q In fact, when the Amazon deal closed at the -- in March of 2022, the Fund issued a press release disclosing that it stood to receive over $125 million on the MGM shares that it held directly and indirectly. Correct?
A We issued several press releases. I don't remember --
Q Okay. Do you remember that, that as a result of the MGM sale, the Fund was expected to receive approximately $126 million?
A Yes.
Q Okay.
A Roughly.
Q All right. In October 2020, just a few weeks before you sent your email, the Fund announced the commencement of a tender offer to acquire outstanding shares at a certain price. Correct?
A Yeah, I believe so.
Q And you authorized that, right?
A Yes.
Q And when a fund acquires shares and then retires them, the shareholders who did not tender consequently own a larger percentage of the fund than they did before the tender, correct?
A Yes.
Q Okay. And the tender was completed in January, in the

first week of January 2001 [sic], correct?
A I don't remember when it was complete.
Q It started at the end of October 2020, and it ended sometime in January '21. Is that fair?
A Okay. I don't remember. Okay.
Q Do you want me to refresh your recollection?
A I'm just saying I don't remember.
Q Yeah, okay.
A I'm not dis...
Q Okay.
A -- denying it. I just don't remember the exact dates.
(Discussion.)
MR. MORRIS: Your Honor, can I mark for identification purposes Plaintiffs' Exhibit -- I'm just going to call it 100, to see if it refreshes the witness's recollection?
THE COURT: You may mark it.
MR. MORRIS: Okay.
THE COURT: We'll see where it goes from there.
(Debtors' Exhibit 100 is marked for identification.)
BY MR. MORRIS:
Q So, I've put --
MR. MCENTIRE: Hold it. Your Honor, I think we're now marking exhibits that we haven't put on an exhibit list.
MR. MORRIS: I'm trying to refresh his recollection.

MR. MCENTIRE: Okay.

MR. MORRIS: Yeah.

MR. MCENTIRE: Well, --

THE COURT: Yes.

MR. MORRIS: Okay? I haven't offered it in -- I haven't offered it --

THE COURT: I've not admitted -- I don't know what it is. I haven't admitted it yet. I'm waiting.

MR. MORRIS: I haven't offered it into evidence. He said he doesn't remember, --

THE COURT: Okay.

MR. MORRIS: -- I've got an SEC document here, and I'm going to try and refresh his recollection.

THE COURT: Okay.

BY MR. MORRIS:

Q You're familiar with these forms, right?

A Generally.

Q In fact, in fact, you sign them in your capacity as the fund portfolio manager, right? Your signature is put on it, anyway?

A Generally.

Q Yeah. And do you see that this is the Form N-CSR that was filed with the SEC at the end of 2001 [sic] on behalf of NexPoint Diversified Real Estate Trust?

A Yes.

Q Okay. So if you just turn to Page 16. And the numbers are kind of at the bottom in the middle of the page. You'll see the notes to the consolidated financial statements.

A Yes.

Q Okay. And Note 1 discusses the organization. Do you see that?

A Yes.

Q And at the bottom of the left-hand column, it says, On January 8, 2021, the company announced the final result of its exchange offer pursuant to which the company purchased the company's outstanding -- the company's common shares in exchange for certain consideration.

Do you see that?

A Yes.

Q That's a reference to the tender offer that you authorized at the end of October, correct?

A Yes.

Q And then at the bottom it says, The company share -- company -- excuse me. I strike that. It says, quote, The common shares at a price of $12 per common share, for an aggregate purchase price of approximately $125 -- $105 million. Upon retirement of the repurchased shares, the net asset value was $152 million, or $17.41 million.

Do you see that?

A Yes.

Q Does that refresh your recollection that the tender offer was completed at the beginning of January?
A Yes.
Q And that's with all of the MGM stock that the Fund still owned at that time, right?
A Yeah. We -- we didn't -- we didn't violate --
Q You didn't --
A We didn't -- we didn't violate like Seery did. We didn't sell any shares or buy shares.
Q Okay.
MR. MORRIS: I'm going to move to strike that, Your Honor.
THE COURT: So granted.
MR. MCENTIRE: Well, Your Honor, I've actually got a response to his motion to strike. This entire inquiry is irrelevant.
MR. MORRIS: Not --
MR. MCENTIRE: This has no relevance at all in connection with the allegations that we're making in this case.
THE COURT: Your response?
MR. MORRIS: My response, Your Honor, if you ask me -- let me just get a few more questions. He personally owned shares in the Fund. The Fund owned shares in MGM. And notwithstanding the restricted material, this is the insider,

and he is benefiting from himself through the Fund's repurchase of these shares in the tender offer, and he went and he had substantial holdings. I'll get to that in a minute.

So he is actually doing something worse than what Mr. Seery -- what he accuses Mr. Seery of, because he's buying shares for his own personal benefit. Right? He's the insider. Right? And the Fund owns the shares directly. There's never going to be an allegation that HCLOF ever owned any MGM stock. Never.

THE COURT: Okay. I'm going to allow this. Obviously, on redirect, you can further question on this --

MR. MCENTIRE: Well, --

THE COURT: -- to --

MR. MCENTIRE: Well, first of all, his suggestions and his accusations are purely argumentative.

THE COURT: Would you please speak in the microphone? We --

MR. MCENTIRE: Well, he's standing in the way, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: It's irrelevant.

THE COURT: There are two. There's room for both of you.

Continue. Go ahead.

MR. MCENTIRE: It's entirely irrelevant, and it's argumentative.

THE COURT: Okay. Overruled. You can continue.

BY MR. MORRIS:

Q You did own an awful lot of the Fund's shares, didn't you?

A I owned some.

Q You owned some? You owned millions, right?

A Yes.

Q Okay. And as a result of the tender, you owned a greater interest of the Fund, right?

A Yes.

Q And therefore you owned a greater number -- a greater portion of the MGM stock, the $125 million of MGM stock that was owned directly and indirectly by the Fund, correct?

A You do know insiders weren't permitted to participate in the tender, which would have kept my percentage the same.

Q Sir, you benefitted -- you didn't stop the tender, right? You didn't say, now I know what's going to happen, I should stop it? You benefitted from the tender. Can we just agree on that?

A I did everything I was supposed to do, notifying Compliance. If they thought it was material, they would have -- it was in their hands once I notified Compliance of the material --

Q Okay.

A -- nonpublic information.
Q I appreciate that. I just want --
A It wasn't my responsibility to do Compliance's job to call you or call --
Q Okay.
A -- the SEC or call anybody else.
Q But you will agree that, even though you had material nonpublic inside information, you didn't take any steps to stop the tender, correct?
A The tender was for a relatively small amount of the stock. But I did -- I would -- it would not be my responsibility to change or adjust the tender --
Q Okay.
A -- or what was happening.
Q Okay. And then the last question is, you benefitted from the tender because the Fund repurchased shares, which increased your percentage ownership of the Fund, and therefore your percentage ownership of the MGM shares that were held directly and indirectly. Is that fair?
A Marginally, I guess. Yes.
Q Okay. From the -- from the millions of shares, you would describe it as marginal? Okay.

Let me move on. You've testified now that you spoke with representatives of Farallon in the late spring, I guess beginning on May 28th. Right?

A Yes.
Q And that was two days after the MGM deal was publicly announced, correct?
A Yes.
Q Okay. And had you ever communicated with Mr. Patel before that phone call?
A I don't believe so.
Q And then you spoke with Mr. Linn shortly after?
A Yes.
Q Had you ever spoken with Mr. Linn before that phone call with Mr. Linn?
A I don't believe so.
Q So these phone calls were the very first time that you ever spoke to either one of these gentlemen. Is that right?
A That I can remember.
Q Okay.
A If I ran into them at --
Q Uh-huh.
A -- a conference a decade ago, I don't know, but --
Q And they told you that they bought the shares in the February-March time frame, right?
A Yes.
Q And you have no reason to dispute that, correct?
A Correct.
Q Okay. And you didn't know how much they had paid for the

claims as a result of these conversations, correct?
A They did not admit a price.
Q Okay. And it's your testimony that there wasn't sufficient information in the public for them to buy -- this is your view -- that there wasn't sufficient information in the public to justify their purchases. Is that your view?
A Correct.
Q And even though you didn't think there was sufficient information in the public, you were prepared to pay 30 percent more than they did, right?
A Yes.
Q And is that because you were 30 percent more irrational than them or because you had material nonpublic inside information?

MR. MCENTIRE: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

THE WITNESS: Even at a 30 percent premium, it was less than I offered the UCC several months earlier, number one.

Number two, I was still under the illusion there was a desire to resolve the place, not burn it down. You know, there was -- all the original members were happy to sell at $150 million. It was a $500 or $600 million estate. There should be $400 or $500 million of residual value. It shouldn't all be going out the door to lawyers and others.

BY MR. MORRIS:

Q You were willing to pay 30 percent more for an unknown purchase price, 30 percent more of an unknown purchase price, at a moment that you didn't believe there was sufficient information to buy the claims, correct?

A You have a couple misstatements in there. The Grosvenor piece was public. The Grosvenor piece traded at $67 million. So we knew that piece trade at around 50 cents. We knew from people in the marketplace the other pieces were trading right around that level.

So I wasn't just offering 30 percent on any willy-nilly number, 130 percent of any willy-nilly number. I knew they had paid around 50, 60 cents. And so I was offering 30 percent more than that. Thirty percent more than $150 million, call it $200 million. I had offered $230 or $240 million to resolve the whole estate before the plan went effective, and I got no response from the original UCC members.

Q So why didn't you just try to settle the case with them? Why did you try to buy the claim? Why, if you had these new people, and your good intentions were to finally get to a settlement of the case, why didn't you say, hey, guys, how do we resolve the case? Why did you want to buy the claims at a 30 percent premium over what they paid with no knowledge and no diligence, according to you? Can you explain that to Judge

Jernigan?

A Because Seery told them to hold on, don't worry, they were going to make $270 million.

Q That doesn't answer my question. Why didn't you try -- you had new owners. Why didn't you try to settle with them?

A When someone owns an asset, buying their asset is settling with them. What claim does Farallon have against us? At that point, they had no claims against us.

Q It doesn't settle the case, does it?

A But if we owned all the claims, it would settle the case. Just like if Seery had objected to the claims trading that they were supposed to give written notice to the Court, he had enough cash on the balance sheet to buy and retire all the claims.

Q All right. Let's go back, I apologize, to that Exhibit 11. No, it's not Exhibit 11. I think it's their Exhibit 4, your notes.

MR. MORRIS: Your Honor, may I have -- just have one moment?

THE COURT: You may.

MR. MORRIS: Can you tell me how long I've been going? That's really my question.

THE CLERK: So, on cross, --

MR. MORRIS: Yeah.

THE CLERK: -- you've been going for 32 minutes.

MR. MORRIS: Okay. Trying to speed this up.

BY MR. MORRIS:

Q All right. So, do we have your handwritten notes, which are Exhibit 4, in this binder? Oh.

THE COURT: Do you want to put it up again on the screen?

MR. MORRIS: Ms. Canty, if you're listening and you can do that, that would be great. If not, --

(Discussion.)

MS. CANTY: One second, John.

MR. MORRIS: All right. He -- he's got it.

THE COURT: Okay.

BY MR. MORRIS:

Q Okay. So, I just -- I just want to make -- you know, follow up on a few questions I asked you earlier on *voir dire*. So, these are your notes, right, and you said you write down the important stuff. Correct?

A I write down, yeah, the stuff I thought I would need for the next call.

Q Okay. And, you know, again, just so we have it all in one spot, it doesn't say anything about MGM. Correct?

A It does not.

Q It doesn't say anything about a *quid pro quo*, correct?

A *Quid pro*? Uh, no, it does not.

Q It doesn't say anything at all about Mr. Seery's

compensation, correct?
A It does not.
Q It doesn't say anything about the sharing of material nonpublic inside information, correct?
A When I told them discovery was coming, that was my response to I knew they had traded on material nonpublic information.
Q Okay. That -- you told them that?
A Yes.
Q Is that what you're saying now?
A Yes.
Q Oh, so that's what you told them? They didn't tell you that; that's what you told them?
A Yes.
Q And that's why you wanted discovery, right?
A I thought it would be a lot easier to get discovery on a situation like this than it has been for the last two years, yes.
Q Okay. Um, --
A In fact, I told them that it would be coming in the next few weeks. And this has been a couple years.
Q And that's exactly what you did, right?
A Well, we've been trying for two years to get --
Q Right.
A -- discovery in this.

Q Okay. So you filed your Texas 202, right?
A I don't know who filed what.
Q That was the one by Mr. Sbaiti that was filed under your name? Do you remember that?
A Generally.
Q Okay. Let's take a quick look at that document. It's #3 in our binder.
A Binder #3?
(Discussion.)
MR. MORRIS: Okay. I think #3 is in evidence, Your Honor.
THE WITNESS: Number 3 is in evidence.
THE COURT: Yes.
MR. MORRIS: Okay.
THE COURT: It is.
BY MR. MORRIS:
Q And if you can turn to the last page, Mr. Dondero. Page 8.
A Yes.
Q Okay. And that's your signature, right?
A Yes.
Q And you verified that this document was true and correct within the best of your personal knowledge, correct?
A Yes.
Q Did you read it before you signed it?

A Probably.
Q You don't recall doing that?
A Not at this moment.
Q And you may not have. Is that fair?
A No, I probably did. Do you have a question?
Q I'm just wondering if you signed it or not.
A I did sign it.
Q Okay. Good. So, can you go to Paragraph 21? Well, let's start at Paragraph 20. It says that Mr. Seery, quote, has an age-old connection to Farallon, and upon information and belief, advised Farallon to purchase the claims.
Do you see that?
A Yes.
Q And then the next paragraph you refer to the telephone call that you had with Michael Linn, right?
A Yes.
Q It doesn't refer to any phone call with Mr. Patel, correct?
A It does not.
Q And the only reason that you swore under oath you were told that Farallon purchased the claims was because of Farallon's, quote, prior dealings with Mr. Seery. Correct? In Paragraph 21, it says, Relying entirely on Mr. Seery's advice solely because of their prior dealings?
A Yes.

Q Okay. You didn't -- you didn't swear under oath at that time that you were told that they bought the claims because of MGM. Right?

A If you're asking if this is -- it seems like it's not complete, if that's what you're asking me.

Q I'm not asking you that. I'm asking you what -- I'm asking you to confirm that you swore under oath to the Texas state court, just weeks after you had these conversations, about what you were told concerning Farallon's purchase of the claims.

I'm focused on Paragraph 21. The only reason that you gave, that you told the Texas state court under oath, was that Farallon told you they bought their claims because of their prior dealings with Seery. Right?

A Yeah. And that's true. And that's consistent with what I've said.

Q Okay. You didn't say anything about MGM, correct?

A Correct.

Q You didn't say anything about a *quid pro quo*, correct?

A Correct.

Q You didn't say anything about Mr. Seery's compensation. Correct?

A I did not.

Q You didn't say anything about the sharing of material nonpublic inside information, correct?

A Different document, different purposes.
Q Well, but that's now two documents. You have your notes and you had this document, neither one of which say any of those things. Fair?
A Different documents, different purposes. I don't know if that's --
Q Is it fair that neither one of those documents say any of those things?
A It's fair that they don't all match.
Q Okay. Okay. Well, that's a fair statement. Let's go to the next one. Do you remember the next year you filed an amended petition?
A What tab?
Q That's -- I appreciate that. It's Tab 4. Do you see at the last page you've again signed a verification?
A Yep.
Q And do you see this one's filed with the Texas state court on May 2, 2022?
A Yes.
Q And you swore under oath that this statement was complete, true, and accurate to the best of your knowledge, correct?
A Yes.
Q Okay. Can you go to Page 5, please?
A Yes.
Q Directing your attention to Paragraph 23, do you see where

you say now that Farallon was relying, quote, on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

Do you see that?

A Yes.

Q Again, you don't say anything about MGM, correct?

A Correct.

Q Again, you don't say anything about material nonpublic inside information, correct?

A Well, on 24 it does. Right? Mr. Seery had inside information on the price and value of claims. So, you've got to look at all of the bullet points.

Q But that's not the paragraph where you're talking -- that's -- it says, in other words. That's not the paragraph where you're describing your conversation with Farallon. That's your interpretation of it, correct, just as you just said?

A (no immediate response)

Q You told -- I'm sorry. I should let you finish the answer. That's your interpretation of it, correct?

A Well, I'm reading all the bullets in aggregate, and it's -- it's a picture of material information shared by Seery, not just MGM or one particular investment, but on all the other assets that aren't detailed in any of the public filings, also.

Q The only -- the only point I want to make, I think we can agree on this --
A Okay.
Q -- is that you believed that Mr. Seery gave them material nonpublic inside information. Farallon never told you that. Isn't that true? That's why you wanted discovery?
A They said they relied on him and did no diligence of their own. They were very express -- explicit about that.
Q Okay. Can you answer my question now?
A Which -- I thought -- that does, --
Q You concluded --
A -- yes.
Q -- that Mr. Seery gave them material nonpublic inside information. They never told you that. Fair?
A They said they relied on -- solely on Seery, didn't buy it for any other reason, and they did no due diligence of their own.
Q Okay. Let's go to the next one. Now, the no-due-diligence part, that's not in any version we've seen, right? That's something that you just --
A No, no, --
Q -- that you're just testifying to now? That's not in your notes, it's not in Version 1, and it's not in this version, correct?
A Well, let's go back to the Linn one, because when I was

going back and forth and he wouldn't give a price, he kept saying, Seery told us it's worth a lot more. And I kept saying, you've got to look at the burn, you've got to look at the professionals. And --

Q Okay.

A -- that's --

Q Shortly after this, you filed yet another declaration, right?

A Yes.

Q Uh-huh. Can you turn to #5? And this is another version of your recollection of what you were told, correct? In Paragraph 2?

A These are all -- I don't know why you're saying they're different. They're all the same. They're just slightly different verbiage. What's the major difference between any of them?

Q I'll ask, I'll ask you the question. The question is, you had never written in any of the prior versions that they didn't do any due diligence; isn't that right? You never -- you never talked about their due diligence in any prior version, correct?

A It's all -- it's all the same version. I don't -- some versions --

Q Can you answer my question?

A I don't know. I don't know --

Q Which --
A -- which ones included which -- I don't --
Q We've just looked at them. Do you want to look at them again?
A I just looked at one page in the other one and it was five pages. I just looked at the one page and I found two or three things --
Q Your notes --
A -- it didn't include, but --

MR. MORRIS: You know what. I don't want to argue. They say what they say, Your Honor, and I would ask the Court to look carefully at our objection to the motion because we lay all of this out.

Your Honor can -- here's the point, because I do want to finish up right now. There are five different versions of this conversation. They're laid out in the brief. And the question that you have to ask yourself, Your Honor, is, if you allow this case to go forward, how do they make a colorable claim when the story keeps changing?

And I'll just leave it at that, because, you know, the last version says MGM for the first time. Like, it comes out of nowhere. This -- his notes don't say it, he hasn't testified that that's what he was told, but somehow that's in his sworn statement.

So I'm just going to rest on the papers, because this is

-- I don't want to be argumentative.

THE COURT: Okay.

MR. MCENTIRE: Well, I'll object to the argument of counsel. He's just doing another opening statement here, and it's inappropriate and not proper.

THE COURT: Okay. I agree. This is Q and A.

MR. MORRIS: Okay.

THE COURT: So, --

BY MR. MORRIS:

Q Do you know -- do you have any knowledge or information as to how Mr. Seery's compensation was established?

A Uh, --

Q Withdrawn. I'm talking now not in his capacity as an independent director or the CEO of the Debtor. I'm only talking about in his capacity as the CEO of the Reorganized Debtor and the Claimant Trustee. Do you have any personal knowledge as to how his compensation was established?

A The knowledge I have is that the Claimant Trust gives full latitude to change it at almost any time they want. Add more to it, add more than that we've seen, double it in the future if reserves are reversed. It can do anything it wants. And I guess we've seen some redacted partial statements of his compensation, but that's all I know.

Q Okay. You have no knowledge about how Mr. Seery's compensation package was determined, correct?

A I was not involved.
Q Okay. You've never -- I'll just leave it at that.
MR. MORRIS: I have nothing further, Your Honor.
THE COURT: Okay. Pass the witness. I'm sorry, I guess I should ask, do any of the other responding parties have examination?
MR. STANCIL: No, Your Honor.
THE COURT: No? Okay. Redirect?
MR. MCENTIRE: Just very briefly, Your Honor.
THE COURT: Okay.
MR. MCENTIRE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MCENTIRE:
Q Mr. Dondero, you remember the questions about Judge Jernigan walking into the courtroom on June 8 two years ago saying, MGM is sold, maybe we can settle this case? Do you recall those questions?
A Yes.
Q And do you remember Mr. Morris's dramatic suggestion that, well, how did Judge Jernigan know, or to that effect?
A Yes.
Q Well, that had already been announced, had it not, publicly?
A Yes.
Q Several weeks before?

A Yes.
Q I'd like to direct your attention -- do you still have Exhibit 4 that he handed you? Do you have Exhibit 4 there?
A Uh, --
Q His exhibit?
A Is that the notes?
Q No, it's -- Exhibit 4 is the verified amended petition to take deposition before suit -- take -- in the state court. To -- deposition.
A You've got to give me more of a clue. I'm sorry. There's like six binders.
MR. MCENTIRE: Mr. Morris, can you show us where the exhibit --
MR. MORRIS: Sure. Which one is it?
MR. MCENTIRE: It's Exhibit 4. I'm going to talk to him about Exhibit 4 (inaudible) that you've have used with this witness.
BY MR. MCENTIRE:
Q I assume -- Mr. Dondero, were you assuming from the tone and the substantive content of his questions that Mr. Morris is suggesting that your notes are not reliable?
A He was trying to make it seem like the versions were different. They were all 90 percent the same. Different -- it seemed like different emphasis for different purposes. And then you have to remember we learned more about Farallon and

Stonehill over time. Like, in the beginning, when I had -- when I -- we didn't even know Stonehill was involved when I --

Q Sure.

A -- first talked to -- when --

Q Well, he made the big suggestion about you never talked about due diligence before. Turn to Exhibit 4, Paragraph 23, which he did not address with you. Can you turn to Paragraph 23 of Exhibit 4? Mr. Morris omitted to refer you to this particular paragraph.

A 23? Go ahead.

Q Would you read it into the record?

A (reading) On a telephone call between Petitioner and Michael Linn, a representative of Farallon, Michael Linn informed the Petitioner Farallon had purchased the claim sight-unseen and with no due diligence, a hundred percent relying on Mr. Seery's say-so, because they had made so much in the past with Mr. -- when Mr. Seery had (overspoken).

Q Now, since you've an opportunity to see other paragraphs and other -- that he was otherwise not selecting, you did refer to the -- to what Mr. Linn had told you about in May of 2021?

A Yes. I've been very consistent. Listen, I believe Farallon tapes all their conversations. So, eventually, as this goes further, I purposefully --

Q Well, let's --

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

THE WITNESS: Okay.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q He also did not direct your attention or the Court's attention to Paragraph 27 of Exhibit 4, selecting -- presumably strategically selecting not to refer to that paragraph. Do you see Paragraph 27?

A Yes.

Q Could you read that into the record, please?

A (reading) However, Mr. Seery is privy to material nonpublic information, inside information of many of the securities that Highland deals in, as well as the funds that Mr. Seery manages through Highland. One of these assets was a publicly-traded security that Highland was an insider of, and therefore should not have traded, whether directly or indirectly, given its possession of insider information.

Q Isn't that paragraph just basically addressing MGM?

A Yeah, that's the only major position we had that that would apply to.

Q So the suggestion that you're just making this MGM stuff up is not true. It's consistent with what you've (inaudible) in other courts as well, correct?

A Yes. I believe it's disingenuous to say that there's different versions of my story.

Q Well, let's continue with Mr. Morris's strategy. Go to Exhibit 3, please. Mr. Morris suggested that there's no reference at all in any of these prior pleadings about Mr. Seery's excess conversation. Do you recall that series of questions?

A Yes. Or his statements, yes.

Q Yes. And he did not direct your --

MR. MORRIS: I move to strike. I asked him if he had any knowledge of the man's compensation package. That's what I asked him.

MR. MCENTIRE: No, sir. Your Honor, that's not what he asked him. That was one of the questions he asked. The other question was, there's nothing in here about compensation. That's what I'd like to address now.

MR. MORRIS: Oh, go right ahead.

THE COURT: Okay.

BY MR. MCENTIRE:

Q Directing your attention --

THE COURT: You can ask. I'd have to go back and check the record whether you had that second question you mentioned. I remember questions about does he have knowledge of Seery's compensation. I just can't remember if he asked, --

MR. MCENTIRE: Fair enough.

THE COURT: -- were there references to it in the --

MR. MCENTIRE: Well, --

THE COURT: -- prior pleadings.

MR. MCENTIRE: -- for the record, we'll make it clear that there is a reference.

BY MR. MCENTIRE:

Q If I could direct your attention to Paragraph 23, Exhibit -- as to --

MR. MORRIS: What exhibit is it?

MR. MCENTIRE: It's Exhibit 3.

MR. MORRIS: Hold on one second.

MS. MUSGRAVE: Your exhibit.

THE COURT: Highland's Exhibit 3.

MR. MORRIS: Give me a moment.

THE COURT: Page what?

MR. MCENTIRE: It's Paragraph 22 on Page 5.

THE WITNESS: I'm sorry. My Exhibit 3?

BY MR. MCENTIRE:

Q Could you read for me, please, Mr. --

MR. MORRIS: Hold on one second. It's my Exhibit 3 or your exhibit?

MR. MCENTIRE: It's your exhibit. This is Hunter Mountain's binder.

MR. MORRIS: Ah, I apologize.

MR. MCENTIRE: You were just using it.

MR. MORRIS: Okay. All right. Go ahead. What

paragraph were you?
BY MR. MCENTIRE:
Q I'd direct your attention, Mr. Dondero, to Paragraph 22.
MR. MORRIS: Yeah.
BY MR. MCENTIRE:
Q Would you read -- would you read Paragraph 22 into the record, please?
A (reading) Mr. Seery had much to gain by brokering a sale of the claim suggested to Muck, mainly his knowledge that Farallon as a friendly investor would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's written compensation package incentivized him to continue the bankruptcy for as long as possible.
Q There was also a series of questions to you about a transaction involving NexPoint -- NexPoint Diversified Real Estate Trust. Do you recall those questions?
A Yeah. Let's talk about that.
Q All right. Tell me what the transaction was.
A I'm sorry. The tender that he was asking about or --
Q Yes, the tender.
A There was -- investors wanted some shares retired, and we didn't have enough cash on the balance sheets. So we tendered in the form of giving them Preferred, which was like equity but a better dividend or a more secured dividend, and 20

percent cash. And then insiders weren't allowed to participate. But the whole tender was only for eight or ten percent of the nominal amount outstanding. And again, you've got a package of securities, so you didn't get any -- you didn't cash. And although it reduced the share count, it also increased the Preferred or the claims against the company. So it was marginally accretive, I guess.

Q All right.

A But, again, as far as inside information is concerned, Compliance is a separate party organization that reports up to the SEC. Has a dotted line to me. Reports to the SEC. They make sure everything we do is compliant.

Q Mr. Dondero, --

A Yeah. Can --

Q -- you didn't participate in the transaction, did you?

A No. Insiders weren't allowed to participate in the transaction.

MR. MCENTIRE: Reserve the rest of my questions, Your Honor.

THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. MORRIS:

Q The reference to the compensation that we just looked at, that was your own personal view, not something that anybody from Farallon ever told you, correct? You can go back and

look.
A Yeah, that --
Q I mean, it's not a trick question.
A Yeah, that was my pleading.
Q Okay. And that was your own speculation, if you will? It had nothing to do with anything Farallon ever told you, correct?
A I never discussed Seery's compensation with Farallon.
Q Okay. Thank you, sir, very much. Just one last question. The price of the tender --
A Yes.
Q -- was based in part on the value of the MGM stock, correct?
A The tender was based on market price --
Q And --
A -- of where the closed-in fund was trading. It was trading at a discount. And the discount to NAV, the NAV included MGM accurately marked at whatever time.
Q I appreciate that.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Dondero, that concludes your testimony.
THE WITNESS: Thank you.
THE COURT: You are excused from the witness box.
(The witness steps down.)

THE COURT: We probably should take a break, right?

MR. MORRIS: Okay.

THE COURT: Caroline, do you want to give them the aggregate time used?

THE CLERK: Yes. The Defendants used 91 minutes right now. And the Respondents together, 86 minutes.

THE COURT: Okay. I thought it was going to be higher than that.

(Laughter.)

MR. MCENTIRE: That's what it feels like.

MR. MORRIS: You were wishing.

THE COURT: I was wishing. Okay. A ten-minute break.

THE CLERK: All rise.

(A recess ensued from 3:17 p.m. until 3:28 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in the Highland matter. Mr. McEntire, you may call your next witness.

MR. MCENTIRE: Your Honor, Hunter Mountain would call Mr. Seery adversely.

MR. STANCIL: Your Honor, we're waiting for Mr. Morris for just 60 more seconds. I think he's on his way back to the courtroom.

THE COURT: Okay. I just noticed.

Did I hear you say you're going to call him virtually?

MR. MCENTIRE: Adversely.

THE COURT: Oh, adversely? Okay. I'm so used to hearing the word "virtually" the past few years.

Oh, and there he is. Okay.

MR. SEERY: I'm sorry, Your Honor.

THE COURT: Mr. Seery, welcome.

MR. SEERY: Good afternoon, Your Honor.

THE COURT: Please raise your right hand.

(The witness is sworn.)

THE WITNESS: I do.

THE COURT: All right. You may be seated.

JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S ADVERSE WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Seery, would you please state your full name for the record?

A James P. Seery, Jr.

Q And you and I met for the first time I believe it was last Friday in your deposition; is that correct?

A You were by video.

Q I mean, --

A We didn't actually meet.

Q Correct. You are currently the CEO of the Reorganized

Debtor?
A That's correct.
Q Prior to your appointment as the CEO of the Reorganized Debtor, you've never served as a CEO of a reorganized debtor in the past, have you?
A I have not.
Q You previously served as the chief executive officer of Highland Capital as a Debtor-In-Possession. Is that correct?
A That's correct.
Q And that was the first time you'd ever served in a position such as that; is that correct?
A As the CEO of a debtor, yes.
Q Right. You also now currently serve as a Trustee for the Highland Claimant Trust, which was put into effect after the effective date of the plan, correct?
A Yes, I'm the Claimant Trustee.
Q All right. That's the first time --
THE COURT: Mr. McEntire, we usually require standing at the podium. I mean, do you need --
MR. MCENTIRE: That's fine. I'm totally fine.
THE COURT: Okay. That's --
MR. MCENTIRE: I forgot.
THE COURT: Okay. Thank you.
BY MR. MCENTIRE:
Q That was -- and your capacity as the Trustee for the

Claimant Trust, that's a first experience as well, correct?
A As the Claimant Trustee, yes.
Q All right. And in these various capacities as a CEO of the Reorganized Debtor, do you consider yourself to be subject to the Investment Advisers Act?
A No, I don't I'm subject to the Investment Advisers Act. I think Highland in certain capacities could be.
Q All right. But do you have any duties that -- that you are required to fulfill under the Investment Advisers Act accordingly?
A Do I?
Q Yes.
A I believe Highland does. I don't know that I have any personal duties.
Q All right, sir. Let me now talk a little bit about your duties that you did have at Highland. You agree that when you were at Highland you had fiduciary duties that you owed to the estate?
A Yes.
Q What were those duties?
A To generally treat the estate on an honest and fair matter.
Q Avoid conflicts of interest?
A Yes.
Q Not self-deal?

A Yes.
Q Do you agree with me that you would have a duty not to trade on material inside -- material nonpublic information?
A Generally, I would have a duty to not trade on material nonpublic information, yes.
Q Can you think of an exception?
A There may be. I just don't think of any one off the top of my head.
Q So, today, you would agree, for purposes of these proceedings, that you would have an obligation as the CEO of the Debtor-In-Possession not to participate in a transaction involving material nonpublic information? Agreed?
A It would depend. So, for example, if I was trading with someone else who had material nonpublic information, that might be a permissible transaction.
Q The HarbourVest transaction, you were involved in negotiating the HarbourVest settlement?
A Yes, I was.
Q Did that involve any component related to MGM stock?
A No, it did not.
Q There was no involvement at all concerning the transfer of MGM stock to any entity as a result of that transaction?
A None whatsoever.
Q Okay. And does HCLOF not have a participation at this time in MGM stock?

A We call it H-C-L-O-F.
Q Yes.
A It does not own MGM stock, and as I far as I know, never owned MGM stock.
Q Okay. You agree you received an email from Mr. Dondero in December of 2020. We've had it here before. You've seen it in the courtroom, correct?
A Yes.
Q Okay. Did you ever send -- forward that email to anyone else?
A I'm sorry. Could you repeat that?
Q Did you forward that email on to anyone else?
A I believe I did, yes.
Q To whom?
A I certainly discussed it with counsel. I believe I forwarded it to counsel, both the Pachulski firm and the WilmerHale firm. Thomas Surgent had gotten it. He was on the email. And I also forwarded it, I believe -- certainly, discussed it -- with the other independent directors.
Q Okay. I'm not going to talk about your conversations with other lawyers in-house, okay, or your outside counsel. Did you take any steps yourself personally to make sure that MGM stock was placed on a restricted list at Highland Capital after you received that email?
A No. MGM was already on the restricted list at Highland

Capital.
Q Okay. And is that because of Mr. Dondero's position on the board of MGM?
A It -- I believe that's the reason. It was on before I got to Highland.
Q Okay. And you agree, do you not, sir, that the email that you received from Mr. Dondero also contained material nonpublic information?
A I don't think so, no.
MR. MCENTIRE: Would you put up Exhibit -- our Exhibit 4, please?
MR. MORRIS: 4?
MR. MCENTIRE: 4.
BY MR. MCENTIRE:
Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to it as H-C-L-O-F -- did that -- did HCLOF own any funds that owned MGM stock?
A HCLOF had interest in certain Highland-managed CLOs that did own some.
Q As a result of the Highland settlement -- excuse me, the HarbourVest settlement, was there any impact on who owned some of those CLO funds?
A No.
Q Okay. How was the CLOs, the funds, handled, if at all, in the -- in the HarbourVest settlement?

A They didn't have any impact whatsoever on the HarbourVest settlement.
Q Looking at Exhibit 4 for a moment, please, did the interests, did the interests in -- HarbourVest's interests in any of those CLOs transfer?
A No, they did not.
Q Okay. And did HCLOF acquire any interest in any of those CLO's as a consequence of the HarbourVest settlement?
A No, it did not.
Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I meant to say. Exhibit 3.
THE COURT: Hunter Mountain Exhibit 3?
MR. MCENTIRE: Yes, ma'am.
THE COURT: Okay.
MR. MCENTIRE: Yes, Your Honor. Excuse me.
BY MR. MCENTIRE:
Q This is the email that we were just referring to that you received, correct?
A Yes.
Q And you don't think -- you knew that Mr. Dondero was on the board of directors of MGM?
A Yes.
Q And he -- as a member of the board of directors, when you received this, you see where he indicated that it was probably a first-quarter event? Do you see that?

A I see what it says, yes.
Q Okay. And you did not think that that was material nonpublic information?
A No, I did not.
Q When he indicated that Amazon and Apple were actively diligencing -- are diligencing in the data room, both continue to express material interest, coming from a member of the board of directors of MGM, you did not think that was material nonpublic information?
A I did not, no.
Q You know the difference between a newspaper article or a media article that discusses rumors of a possible sale and the difference between that and a member of the board of directors saying that a sale is going to occur? You understand the difference between the two?
A Between the two things you just outlined?
Q Yes.
A Yes. One you said a sale is going to occur, and the other you said a media report. But it would depend on what's in the media report. Some media reports are pure speculation. Others have a lot of detail, and they clearly came from an inside source, and that's why the market moves on them.
Q Okay. So what you're suggesting to me, that there was some indication in the media press before you received this email suggesting that there was actually going to be a sale in

the first quarter of 2021?
A I don't know if it had a first-quarter event in it, but certainly it was clear from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction had to take place very quickly. And in fact, the transaction did not take place in the first quarter.
Q Okay. So you -- when you received this particular email, you did not think that it was requiring any additional protection at -- in any way? Is that what you're suggesting to this Court?
A That the email required additional protection?
Q That you didn't take additional steps to make sure that it was maintained on the restricted list.
A It was already on the restricted list, so there was no change.
Q Was it --
A I --
MR. MORRIS: Hold on. Let him finish.
BY MR. MCENTIRE:
A I was suspicious when I got the email, but I didn't think I had to do anything else than the steps I told you I just took.
Q Yeah, I'm not asking whether you were suspicious or not. My question's a little bit different. You understand that MGM

was taken off your restricted list in April of 2021?
A I understand that that's what you've recently shown me. I wasn't aware of that fact or I didn't have a recollection of that fact, but certainly April of 2021 would be beyond the first quarter. Mr. Dondero was not an employee, an affiliate, subject to a contractual relationship. He had no duty to Highland and Highland had no duty to him. And in fact, it was quite antagonistic by that time. So it would be appropriate to take MGM off the restricted list at the end of that time.
Q Well, hopefully you won't take this as argumentative, but I object as nonresponsive. That really wasn't my question. Okay? My question --
THE COURT: Sustained.
BY MR. MCENTIRE:
Q -- is a little bit different. As far as you were concerned, MGM was on the restricted list and stayed on the restricted list all the way until the public announcement in May of 2021?
A That's not true.
Q When did you first become aware it was taken off the restricted list?
A I didn't -- I wasn't aware that it had come off the restricted list. I would have assumed it would have been off the restricted list once Mr. Dondero had been severed from Highland.

Q I see. Now, Mr. Dondero has relayed a conversation that he had with Mr. Patel and Mr. Linn, suggesting that they were particularly optimistic about MGM based upon what you told them.

A I --

Q Let me finish. If that occurred, are you suggesting that that is a lie?

A Two things. One is I don't think he actually testified to that. I think he said he had a conversation with Mr. Patel. Then he had a different conversation with Mr. Linn, and a subsequent conversation with Mr. Linn. So the way he laid it out were multiple conversations.

Q Agreed.

A I don't -- I don't know which one you're talking about.

Q Mr. Dondero testified that Mr. Patel was particularly optimistic about the investment because of what he had learned from Mr. -- from you about MGM.

MR. MORRIS: I dispute that characterization. Why can't he just ask the question?

MR. MCENTIRE: That is my question. If that --

THE COURT: What is the question? I'm not sure I hear the question.

MR. MCENTIRE: I'm getting lost because I'm getting interrupted. I'll try to rephrase it again.

MR. MORRIS: It's my first objection.

MR. MCENTIRE: And I --

THE COURT: Go ahead.

MR. MCENTIRE: I'm just going to rephrase, Your Honor.

THE COURT: Just rephrase your question.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero has testified that Farallon advised him in May of 2021 that they were optimistic about MGM based upon what you told them. Assuming that to be the case, do you deny that happened?

A I do deny that happened. Because I can't -- I don't know what Farallon told him, but I never told Farallon anything. And a conversation on May 28th, after the May 26th announcement that MGM was going through, might make people optimistic that it could go through, but there was a very difficult FTC process that MGM would have to go through.

Q And I'm referring to that. If Farallon stated that they were optimistic about MGM based upon what you had told them, --

A That would not be true.

Q -- that would be false?

A That would not be true.

Q And is Mr. Dondero says that's what Farallon told them, that would also be false?

A That's correct.
Q So we have your statement, we have what may be Farallon's statement, and we have what Mr. Dondero believes may have been Farallon's statement, and you're saying the latter two are just not true?
A I didn't have a conversation with Farallon about MGM that -- that I recall --
Q Well, you're on the witness stand.
A -- virtually at any time.
Q You're on the witness stand.
A Oh, I'm aware of where I am sitting.
Q Yeah. Good. We've got that cleared up. Now, are you suggesting that -- that you may not specifically recall this conversation?
A No, I am not saying that at all. After May 26th, when the MGM announcement was made and it was public, I may have had conversations with a number of people about MGM.
Q Well, let's make sure the record is clear. Did you call Farallon on May 26th and say, hey, did you know that MGM just sold?
A No, I don't recall any such conversation, and I wouldn't have had to, since it was in the paper.
Q I'm not talking about what's in the paper. I'm talking about conversations between you and Farallon.
A Yeah. I don't recall having a conversation with Farallon

on May 26th.
Q How about May 27th?
A Not that I recall, no.
Q How about May 28th?
A Not that I recall off the top of my head.
Q And we understand that that's the day that Mr. Dondero actually had his conversation that he's reported, at least, with Farallon. Do you recall that?
A That's what he claims, yes.
Q You were with a company called River -- you're a lawyer, correct?
A I am. I'm in retired status.
Q Okay. I wish I was.
A It's simply retiring your license and not having to take the CLE.
Q Understood. Now, you were with a company called River Birch?
A Yes.
Q And from River Birch, you went to Guggenheim Securities?
A That's correct.
Q At Guggenheim Securities, did you go to Farallon and meet with Mr. Patel in their offices in San Francisco?
A I believe we did, yes.
Q You call it a meet-and-greet?
A I do, yes.

Q That was in 2017?
A 2017, 2018. I'm not exactly sure when it was.
Q And one of the purposes of meet-and-greet is to solicit business or to see if a business opportunity -- see if it exists?
A That's not correct, no.
Q What is a meet-and-greet for, then?
A It's to meet the people at the fund and to greet the people at the fund. Introduce them to other people in your firm.
Q Just because it's going to be fun, or does it have a business angle to it?
A Oh, it hopefully will be fun, yes, but it's done in order to build a relationship over time. You're not in there soliciting business. If you do that, you won't do very well.
Q Okay. Fair enough. So you're there trying to develop a relationship with Farallon?
A Guggenheim was, yes.
Q And you were part of it?
A That's correct.
Q And what was your job at Guggenheim?
A I was co-head of credit.
Q Is that a fairly significant position at Guggenheim?
A Not really, no.
Q It's not significant at all?

A No.
Q All right.
A Which is why --
Q Well, you left --
A Which is why they don't have that business.
Q Okay. So is that why you left Guggenheim?
A It -- I did, yeah. It wasn't a good fit for either Guggenheim or for me, because it really wasn't something --
Q When did you --
A -- that they were set up to do.
Q -- leave Guggenheim?
A In 2019.
Q And then you went back to Farallon to meet with them again, did you not?
A I met with Farallon while I was in San Francisco with my wife.
Q Okay. Did you call ahead to arrange the meeting, or was it just a --
A I --
Q -- a blind call?
A I did call ahead, yes.
Q A cold call, I guess, is the word -- the phrase that they use. Okay. So -- and was that a meet-and-greet?
A That was again, yes.
Q Again, what were you trying to do? Develop a relationship

with Farallon?
A I was trying to catch up with them after having met them previously. And that was just Raj Patel. And this one I also met Michael Linn.
Q Okay. What kind of business were you in when you met with them the second time?
A I wasn't doing anything.
Q What were you hoping to do?
A I was hoping to get back into the investing side of the business, from running a credit-type lending business at Guggenheim, which is what they tried to do and it didn't work out. And I wanted to get back to what I was doing more at River Birch, but I was looking at other opportunities, whatever came along.
Q Well, what were the different options that you were looking at?
A I was looking at potentially getting back into investing, joining potentially a restructuring firm, any options like that. I was not looking to become a lawyer again.
Q And why would meeting and greeting with Farallon fit in within that scenario, the strategic scenarios that you've just discussed?
A They're a giant hedge fund.
Q A giant hedge fund?
A Yes.

Q And so it would be good to have a relationship with a giant hedge fund, wouldn't it?
A And to know what their thinking of the markets, where the opportunity set might be, who they are dealing with and interacting with. Those are -- those are valuable things to know over time.
Q And --
A And you need to maintain those relationships in order to be --
Q Sure.
A -- part of any business.
Q Sure. These meet-and-greets can actually evolve and provide relationship benefits, correct?
A I don't -- I'm not sure what you mean by relationship benefits.
Q Sloppy words for -- on my part. They can evolve into something that is a meaningful relationship?
A They could over time, yes.
Q And we know that after you became the CEO of Highland Capital that you received a call from, was it Farallon, to congratulate you on your appointment?
A It was an email.
Q And that was in the summer of 2020, shortly after your meet-and-greet out in San Francisco?
A Your calendar's a bit off, but it was in June of 2020, so

that would have been more than shortly after, but yes.
Q Okay. And who contacted you to congratulate you on your appointment?
A This was my appointment as an independent director. I had not yet been appointed as CEO or CRO. This was in June of 2020, and it was Michael Linn.
Q Michael Linn? Was it a telephone call?
A I think 30 seconds ago I said it was an email.
Q Fair enough. Do you still have that email?
A I do, yes.
Q Okay. He contacted you again, "he" being Michael Linn, he contacted you again in January of 2021, did he not?
A That's correct, yes.
Q He wanted to see if he could get involved somehow in the Highland bankruptcy?
A Well, he congratulated -- he didn't congratulate -- he wished me a happy new year, and he basically said it looks like you're -- again, he's following the case -- it looks like you're doing good work. Is there any way for us to get involved? We're interested in claims or buying assets.
Q Okay. And Stonehill. Now, you know the founder of Stonehill, do you not?
A No, I don't know him. I've met him several times.
Q Doesn't he come by and stop in and talk with you when you're in Stonehill's offices? And that's happened recently?

A Your use of the plural is incorrect, and you know that from the deposition. I was in Stonehill's office one time, and I was in a meeting with Mr. Stern. We ended up having a board meeting from Stonehill's office with the other participants on video, and Mr. Motulsky came in and said hello.

Q All right. And who's Mr. Motulsky?

A He's the founder of Stonehill.

Q I see. And did you know Mr. Motulsky before that?

A I'd interacted with Mr. Motulsky over the years at -- mostly at industry-type functions.

Q Okay. Now, Stonehill is also a hedge fund?

A Yes.

Q Are they different than Farallon in that regard, or similar?

A I don't know as much about what their business is. They certainly do a direct lending component, so I know that they -- they will do some direct lending, which I don't think is something Farallon really does. Farallon is much bigger, as I understand it, but I don't really know the size of Stonehill.

Q Okay.

A I know they're not a $50 billion fund like Farallon.

Q And do you know Mr. Stern at Farallon?

A I now know him, yes, because he was -- he's really the representative on the -- no, he's not the representative on

the board, but he is the one who manages the Stonehill and Jessup positions for Stonehill.

Q Well, we know that after you were CEO of Highland, you also got a text message, correct, a text message from someone at Stonehill, correct?

A Mr. Stern sent me a text message reintroducing himself -- I don't know if it was re- or just introducing -- and sent me his email and asked me to contact him about the case. This was at the end of February/beginning of March 2021, after the confirmation order.

Q Okay. After the -- after the confirmation order?

A Yes.

Q I believe the confirmation order -- I may be wrong -- I thought it was like the 21st, 22nd, somewhere in there. Does that sound right to you?

A Yes.

Q Okay. So, shortly after confirmation, then, Farallon calls you to congratulate you and wants to see how they can get involved?

A No. There was no congratulations there. Shortly after the confirmation order, which I believe was at least a week to ten days after confirmation, I got the communication from Mr. Stern to try to connect about the case.

Q All right.

A He's at Stonehill, not Farallon.

Q Correct. Now, --
A You said Farallon.
Q I misspoke, then. Thank you for correcting me. Let's talk about -- you live in New York?
A I do.
Q You're involved with a charity called Team Rubicon?
A Yes.
Q And Team Rubicon is a -- is that a veterans-type charity?
A Yeah. It's a veteran-led organization, and what it does is connects veterans to disasters. And mostly in the U.S., but also all over. So if there's a flood, if there's a hurricane, if there's an earthquake, veterans who have been trained in -- by the military in ready response and really being able to handle themselves when things are bad are deployed to help the communities that are hit. So I think that Team Rubicon likes to think, you know, on your worst day they're your best friend.
Q So you're -- are you on the board?
A No, I'm not.
Q You're on the Host Committee?
A I was on the Host Committee last year, and I'll be on the Host Committee this year.
Q Okay. And you have charity events?
A We have a charity event, yes.
Q Okay. And the purpose of the charity event is to raise a

bunch of money?
A That's correct.
Q Okay. Have you been successful in the past?
A I do my best. Team Rubicon is a big organization. It's done very well raising money. It doesn't have an endowment. The founder's theory was that if people give us money, we're supposed to spend it on helping other people. And so each year it has to raise more money.
Q And Stonehill has been -- has contributed to your charity?
A I believe Stonehill, one or two years, and I should know this, and I didn't look it up after our deposition, gave $10,000.
Q Okay. Maybe once, maybe twice?
A Maybe twice.
Q Okay.
A I hope more.
Q Okay. And they also attend your -- your actual charity events, do they not?
A No.
Q All right. They just give money?
A That's right. And the Mike Stern who's on the board of Team Rubicon is not the Mike Stern who is at Stonehill. It's an older gentleman who's in Texas who just happens to give a lot of money to --
Q All right.

A -- Team Rubicon.
Q You also represented Blockbuster. Take that back. Were you the lawyer or the attorney representing the Creditors Committee, the UCC, in the *Blockbuster* bankruptcy?
A No, I was not.
Q Tell me what your capacity was.
A I represented a group of bondholders, secured bondholders. So I represented the group.
Q And was Stonehill a member of that group?
A Not that I recall, but your pleadings seem to indicate that they were. So if they were, they were a small participant. The largest participant was Carl Icahn, who owned about 30 percent of it. Then the others who were big were DK, Davidson Kempner, Monarch, Owl Creek. Those were the big players.
Q Well, --
A When Carl Icahn is in your group, you remember that.
Q Yeah, well, Carl Icahn is not here. We're talking about Stonehill right now.
A And I said I don't remember them actually being a part of it. If they were, --
Q Okay. Well, let me -- let me give you what I'm going to mark as Exhibit 80. That's your name at the top, right?
(Hunter Mountain Investment Trust's Exhibit 80 is marked for identification.)

A That's correct, yes.
Q You were at the time with Sidley & Austin?
A That's correct, yes.
Q This is *In re Blockbuster*.
MR. MCENTIRE: Scroll down, please.
BY MR. MCENTIRE:
Q And steering group of senior -- involves -- well, let's count them. Let's see. One, two, three, four, five. Five entities comprising the backstop lenders. Is that correct?
A I think that's the steering group. So, in order to represent the group, you need to try to assemble a large-enough group that it's material to the company. And then the company, if you're -- particularly if you're over 50 percent, will pay the fees of the group. And you don't represent any individual member of the group. I've never represented Carl Icahn. I represent the group. And if folks want to stay in the group, they can stay. If they want to trade out of the group, they do. And the company will generally continue to pay the fees, and you represent the group so long as you have a controlling interest in the -- whatever the issue is.
Q Well, that's interesting, because now what you're telling me is that this group right here, this is kind of like the executive committee of the group.
A No, it's called the steering group, and it doesn't necessarily --

Q That's fine.
A Well, it's not an executive committee. It doesn't necessarily include just the largest. Some large holders won't be on it. The largest holders here by a long shot were Icahn, who --
Q I'm not talking about --
A -- unloaded, as I say, over 30 percent. Monarch, Owl Creek, and I just don't recall Stonehill being a part of it.
Q I'm not really interested in Carl Icahn. I just want to establish this is a steering group in which you were the lead counsel and Blockbuster was on it. Is that correct?
A Yes.
Q Excuse me. Not Blockbuster.
A I'm sorry.
Q Stonehill.
A No, it's the Blockbuster case in 2010, and Stonehill was apparently on it, but I just don't have a recollection of their involvement.
Q All right. So when Mr. -- who sent you the text message in February of 2021 from Stonehill?
A Michael Stern.
Q And had you actually met him before?
A I think I had, but we didn't know each --
Q All right.
A You know, we certainly didn't know each other, we'd never

worked on anything together, but I --

Q Do you have all your text messages from that period of time, that first quarter of 2021?

A I believe I do, yes.

Q They're saved?

A Yes.

Q Okay. When did the automatic delete button on your cell phone start?

MR. STANCIL: Your Honor, objection. We've covered this this morning. I believe this is a motion coming down the pike, and I thought we had -- thought we had had tabled this preservation issue.

MR. MCENTIRE: This has a direct bearing on his communications with Farallon and Stonehill in this period of time, Your Honor. We have one text message that he's identified, and I have a right to examine whether there are others. Or if not, why not.

MR. STANCIL: Your Honor, he's --

MR. MCENTIRE: That's a legitimate -- I'm not finished. That's a legitimate area of inquiry in this examination.

MR. STANCIL: He's testified he has them all. Your Honor did not order document discovery. I think that's it for purposes of today's hearing, Your Honor.

THE COURT: Okay. I sustain the objection.

BY MR. MCENTIRE:

Q After this text message that you received from Stonehill in February 2021, did you have any follow-up?

A Well, his text message, I don't recall what it said other than I was -- I do recall that he gave me his email address, because I didn't have it. And we just didn't know each other well enough. But we definitely had follow -up. He wanted to talk to me, and at some point we talked.

Q And when did you talk?

A I'm sorry?

Q When did you talk?

A When? I -- it was at the, initially, end of February, beginning of March. So it would have been somewhere in that -- in that time period.

Q End of February, beginning of March? And we also know that you next talked to Farallon, according to your testimony, and they advised you they had already purchased all their claims as of March 15, correct?

A On March 15th, they sent me an email that said they had purchased an interest in claims, and --

Q So -- go ahead.

A I'm not finished. And then at some point after that, we arranged a quick discussion, because that was a curious --

Q I want to assure you I will always let you finish.

A Thank you very much.

Q Unlike others. So, with that said, Mr. Seery, can you identify -- let me back up. Was there a data room set up at Highland Capital for claims investors to come in and look at data?

A No, there was not.

Q Are you aware, sitting here today, that Farallon did any due diligence in connection with its investment in the claims it purchased that are at issue in this proceeding?

A I have indication that they did some, yes. I don't know how much they did.

Q What is the indication?

A In the email in June of 2020, Mr. Linn said that he and his associate were following the case, thought it was -- that's the one that congratulated me on being an independent director, and that they were paying attention to the case. And it -- I don't recall the exact other items in there, but it was clear that they were following the Highland matter. And then in the email in January 2021, he also indicated that they'd been following the case further, and said, Looks like you have things well in hand, or something to that effect. So --

Q Do you have that email, too? Have you saved that email?

A They're all saved, yeah.

Q Okay. So let's talk about that. But you had no data room that would allow them to come in and actually investigate the

underlying assets. Is that correct?
A Not in respect of anybody trying to buy claims. We did have a data room with respect to financing.
Q Please listen to my question. I'll get to it. Data room for claims investors. There was no data room set up on or before March 15 to allow Farallon to come in and investigate its investment in this claim?
A That's correct.
Q There was no data room set up prior to March 15 to allow Stonehill to come in and investigate its investment in the claims it purchased. Is that correct?
A That's correct.
Q Can you identify any due diligence, sitting here today -- let me back up. You heard Mr. Dondero's testimony about portfolio companies, correct?
A Yes.
Q Portfolio companies are companies in which Highland Capital has an interest that actually have separate and distinct management. Is that correct?
A Generally. And it -- I disagree with some of his testimony, but generally that's correct, yes.
Q Well, okay. Let's just take on the part that you agree with. With regard to those portfolio companies, was there anything that was disclosed in the Highland publicly-available financials that would allowed a detailed analysis of

Highland's investments in each of those portfolio companies?
A I don't know. Certainly, in the four or five sets of projections that were filed, there were financial projections. I'm not sure exactly what was included in each one or in the disclosure statement.
Q Fair enough. Well, I'll represent to you I don't think there's detailed information on each individual portfolio company.
MR. MORRIS: Your Honor, he's not here to testify. I move to strike.
MR. MCENTIRE: Okay.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q In that regard, Mr. Seery, can you identify what Farallon did to investigate the underlying asset value of any of these portfolio companies?
A I don't have any knowledge as to what Farallon did before it bought claims.
Q Can you identify what due diligence Stonehill did to investigate the underlying asset value in any of these portfolio companies?
A I don't -- I mean, in connection with claims purchasing, I have no idea what Stonehill did.
Q Now, I understand that you solicited -- perhaps I don't recall correctly. Did you solicit both Farallon and Stonehill

to participate in a bid to provide exit financing?
A I don't think that's fair. I solicited Farallon because I knew they already owned claims. Stonehill reached out to me, and that was one of the things they were interested in doing, if there was financing needs.
Q Okay.
A And at the time they reached out, which was right after confirmation -- right after confirmation and the confirmation order, we didn't know what our needs would be. We didn't really, at the early stage, think we needed exit financing. When we looked at some of the difficulty we were going to have -- for example, collecting notes and realizing on assets -- we realized that we were going to need some exit financing in order to have enough money to support the enterprise to monetize the assets.
Q And I think you used the -- I think the phrase you used, you are the straw man or a straw man bid? Is that what you called it the other day?
A We did. You set up a very typical competitive process to do exit financing.
Q And what was the --
A And what -- well, I --
Q -- suggest --
A I was going to get to your straw man. And one of the things you do is you assess what the market's going to look

like, what you think the market looks like, what you think a financing would be good for the enterprise, the flexibility you need, how you'd structure it. And then you put that out to prospective lenders and say, Here's our straw man. This is what we'd like you to consider in terms of financing. And then they do their work and come back. And they can either say, that looks great, or we have a totally different idea of what the financing might be, or some other combination of those things.

Q Mr. Seery, thank you for that answer, but I need to ask you to do me a favor. I'm on the clock, and so I'd just like to get my questions out, if you'd try to respond. Okay?

A Uh-huh.

Q Because your answers, as long as they may be, are impacting me a little bit.

So let me ask this question. In the straw man proposal that you put out for bid, what was the suggested interest rate?

A You know, you asked me that the other day, and I think I was slightly off. So it -- and I -- but I did tell you that it depended. There was -- I don't recall what the rate was, but it starts -- if everybody wants to put out money -- and I apologize for the length of the answer -- they look and they say, well, what if I get paid back in six months? Nobody wants to do that. So, duration makes a difference. So

there's an interest rate. There's upfront fees. There's often exit fees. And sometimes there's other amounts. So, our -- my recollection is that our straw man was somewhere in the low teens on the high end, and then closer to high single-digits on the low end. Something in that range.

Q And Farallon indicated to you they were not interested, correct?

A No, not exactly. What Farallon said was they didn't -- they signed an NDA because we invited them in. We invited in six folks. Five signed NDAs. Two of the -- I invited in Farallon. I invited in Stonehill. Well, Stonehill called me. I invited in Contrarian because they had bought claims. And then two lenders that I knew. And Farallon did the work and came back and said, this isn't really what we do. And the other guys, you're telling me, which I was, that other people are more competitive. And so it's not really what we do, we don't think the returns are good enough, but if you need us, because now they're already invested in the claims, call us.

Q Okay.

MR. MCENTIRE: And again, I'll object as nonresponsive. Your Honor, that was a very long answer talking about a lot of other entities. My only question was what the interest rate was.

MR. MORRIS: Your Honor, we oppose the motion to strike. I think it's --

MR. MCENTIRE: No, I didn't strike it. I said -- my objection was nonresponsive. I will now follow it up with a motion to strike his answer.

THE COURT: Overruled. Okay.

BY MR. MCENTIRE:

Q Mr. Seery, you just told us that the interest rate was in the high single digits to in the 12 and 13 percent range.

A No, I was giving you the all-in return for the lender. That's a very different --

Q All-in return?

A -- thing for the -- than an interest rate.

Q That's even better.

A And it depended on the time.

Q Fair enough.

Q So if -- the shorter the duration, the higher the effective return, because he's not getting the return for as long a period of time. If I have $100 million and I get 10 percent, I get just $10 million. But if I have that out for $3 million, I've earned $30 million. So maybe that gets squeezed in the longer it's out.

Q And Farallon said that the interest rate or the return rate was not what they were looking for?

A They indicated two things. I believe I've said this several times. One is they said, this isn't really what we do, a $50-ish million dollar loan to do an exit. But we're in

the case. If you need us, call us. Included in that was, it doesn't look attractive enough to us because you're telling me other guys are more competitive.

Q Okay. And do you know what kind of rate of return they were going to get on the investment of the -- on the claims at a 71 percent projected return rate?

A If we only hit the plan, Farallon's two purchases, based on the numbers you get -- you gave, over a two-year period, would be 38.9 percent.

Q Okay, but we're going to talk about that in a second. Okay. How much -- how much did Farallon actually invest?

A I'd have to look back at your numbers. They're in your pleading. I don't know what they actually paid. I just have it from your pleading.

Q Okay. And do you have paperwork that -- can you (inaudible) calculation here?

A I have a calculator that, when I looked at your numbers, I ran that, and I --

Q I see. All right.

A I'm able to remember certain things.

Q So, so if it's projected that the internal rate of return is only six percent, do you disagree with that?

A A hundred percent disagree. There's -- that's virtually impossible.

Q Okay.

A And that's, by the way, for hitting the plan.
Q I'm sorry?
A That's for hitting the 70 -- the 71-and-change percent.
Q I want to ask you a question about that. The 71-percent-and-change --
A Uh-huh.
Q -- that came out of the plan for Class 8, --
A Yes.
Q -- that was for Class 8, correct?
A Correct.
Q There was zero expected return to Class 9, correct?
A That's correct. They would only get upside, and I think it says in the projections, based upon our view at the time, litigation that could ensue, and that was part of the plan.
Q And as I understand it, that 71-and-some-change --
A Uh-huh.
Q -- projected return rate never changed from the date of confirmation all the way up to the effective date. Am I correct?
A The -- we didn't change the projections that we'd filed with the plan because the plan was confirmed. We didn't need to change the projections that were filed with the plan.
Q The NDAs, as you understand it, can you tell me specifically when the NDAs were signed?
A I know it's the first week of April to the second week of

April. Blue Torch may have signed -- who actually ended up doing the financing -- they may have signed it a week or so before. They'd been around offering financing a number of times in the past.

Q Fair enough. But we know that you understood as of March 15th that Farallon had already made their investments? I mean, claims?

A That's what they told me in that email, yes.

Q Okay. When did Stonehill sign the NDA?

A In and around the same time.

Q But you don't know when Stonehill actually purchased their claims?

A I don't know exactly when. I know generally that by the end of April, early May, they were -- they were the holder of the Redeemer claim. And --

(Interruption.)

A -- I can't remember whether it was from them or whether it was from --

Q Did you ever communicate with Stonehill during the time that they were doing their due diligence on the exit financing?

A Yes.

Q Okay. Did they come to your offices?

A I don't know if we were back yet. I think we were back, but I don't recall them coming to our offices. I think it was

all virtual. It's early '21, so there would have been vaccines. It would have been very -- very -- I don't recall them coming to the offices at that time.

Q But just to be clear, you don't know, you can't give the Court a date when Stonehill actually completed their investments in either Redeemer or HarbourVest?

A No, I don't. I don't know. Did -- just --

Q That was my question.

A When you say Redeemer or HarbourVest, they never bought HarbourVest.

Q It was just Redeemer?

A Correct.

Q All right. You understand that Muck is an entity, a special-purpose entity created by Farallon?

A That's my understanding, yes.

Q And you understand Jessup is a special-purpose entity created by Stonehill?

A That's my understanding, yes.

Q Muck and Jessup are both on the Oversight Committee?

A They are. They -- those entities are the --

Q Is it the Oversight Committee or the Oversight Board?

A Same thing.

Q Fair enough.

A I'll consider them the same.

Q And there's a third member, too, correct?

A That's correct.
Q Okay.
A Independent member.
Q Okay. So you have a three-person board; is that right?
A That's correct.
Q And one of their jobs is to make decisions concerning your compensation?
A The structure of the Claimant Trust Agreement provides that I'm to negotiate with the -- either the Committee or the Oversight Board. And the compensation in the Claimant Trust Agreement is a base salary of $150,000, which is -- a month, which is the same as the one in the case, plus severance, plus a success fee. And it's very specific that that will be negotiated by the -- either the Committee or then the Oversight Board.
Q And Michael Linn, who Mr. Dondero has referred to, he's actually on the Oversight Board, is he not?
A He's the Muck representative on the Oversight Board.
Q All right.
A Yes.
Q If I understand it correctly, you are currently receiving, as the Trustee, $150,000 a month. Is that correct?
A That's incorrect.
Q What are you receiving?
A I receive $150,000 a month as the Trustee and the CEO of

Highland Capital.

Q Well, --

A So I have --

Q -- fair enough.

A I have both roles. The Trustee, for example, doesn't manage the team, they actually work for Highland Capital, and I'm the CEO of Highland Capital.

Q There was some suggestion that the $150,000 was something that the Court had passed upon prior to the effective date or part of the plan. This is a separate negotiated item that you -- that you allegedly negotiated that was awarded to you post-effective date, correct?

A That's false.

Q Okay. So the $150,000 had a discount that was supposed to drop down to $75,000 after a period of time. That never happened, did it?

A The -- you seem to be mixing concepts. But the $150,000 a month was set by the plan and the -- and the Claimant Trust Agreement as the "base salary." That wasn't going to move. When we -- it never was supposed to move.

When I began negotiating with the Oversight Board for the success fee, they pushed back and said, we would like that to step down. So in our -- I did not say, oh, that's a great idea. We ended up negotiating, and they included a provision that we would renegotiate depending on the level of work.

That's one of the provisions.
Q Okay. But renegotiate down to $75,000 after a period of time, but that never happened?
A Initially, I believe it was supposed to step down to $75,000 automatic, subject to renegotiation that it go back up, not a structure that I particularly liked. And since then, we've negotiated on that point.
Q So you currently are making $150,000 a month?
A That's correct.
Q How often do you come to Dallas?
A Usually I'm here at least once a month. Usually it's between two and four days.
Q Okay. And you have a staff here in Dallas at Highland Capital, correct?
A Yes.
Q How many people?
A Eleven.
Q Eleven people?
A Uh-huh.
Q Working full-time?
A Yes.
Q And you're still making $1.8 million a year?
A Yes.
Q You also have a bonus structure, correct?
A That's correct.

Q And that's performance-based?
A That's correct.
MR. MCENTIRE: Can you pull up the agreement please? Okay.
(Pause.)
BY MR. MCENTIRE:
Q All right. Do you see --
MR. MCENTIRE: We're having technical difficulty here.
BY MR. MCENTIRE:
Q All right. Can you identify this document?
MR. MCENTIRE: What exhibit number is this?
MR. MILLER: 28.
BY MR. MCENTIRE:
Q Exhibit 28.
MR. MCENTIRE: I believe this is already in evidence.
THE COURT: Hunter Mountain Exhibit 28?
MR. MCENTIRE: Yes, Your Honor.
THE COURT: Okay.
BY MR. MCENTIRE:
Q This is the memorandum of agreement. Do you see that?
A Yes.
Q On the third line, it says -- and your name is identified here. You're the Claimant Trustee, correct?
A Claimant Trustee/CEO.

Q Engaged in robust, arm's length, and good-faith negotiations regarding the incentive compensation program.

As part of this robust, arm's length, and good-faith negotiation, did you personally conduct any independent search in the marketplace?

A I did -- what do you mean by search in the marketplace?

Q Well, did you try to do a market study? I asked that question in your deposition.

A I didn't know if you were asking a different question.

Q Same question.

A You mean market study on compensation?

Q Yes.

A No, I did not.

Q Are you aware of whether or not any member of the Oversight Board or Oversight Committee did a market study?

A On compensation?

Q On compensation.

A I'm not aware that they did one, no.

Q So this robust, arm's length, and good-faith negotiation, as far as you know, is divorced from any market study database or -- or methods. Is that correct?

A I don't believe that's correct, no.

Q I see. So did -- was any third-party consultant hired?

A Not by me or Highland or the Trust, no.

Q All right.

MR. MCENTIRE: Can you scroll down a little bit, please?

BY MR. MCENTIRE:

Q You signed this agreement, correct?

A Yes.

Q And we have Michael Linn signing on behalf of Muck, who also is with Farallon, correct?

A That's correct.

MR. MCENTIRE: Scroll down.

BY MR. MCENTIRE:

Q And by the way, this is a heavily-redacted document. The redactions deal with what?

A The redactions deal with the portion that would go to the team as opposed to going to me.

Q Are we talking about the 11-member team?

A Correct.

MR. MCENTIRE: Can you scroll down? Stop. Go back.

BY MR. MCENTIRE:

Q So we have the assumed allowed claim amounts under Section D. Do you see that?

A Yes.

Q Class 9, $98 million and some change. Class 8, $295 million and some change. Then we go into the incentive payment tiers. Do you see that?

A Yes.

Q What's the purpose of the tiers?
A The purpose of the tiers was to set additional compensation so that, the more recovery, the higher the compensation. So, below Tier 1, there was really effectively no bonus, is my recollection. And then in each tier there would be a percentage.

So the first tier is $10 million. There would be a percentage of that $10 million that could be allocated for bonus. Then in the next tier it would be $56 million. A portion of that would be allocated for bonus. And it's weighted more heavily to the higher-recovery tiers, meaning it incentivizes both me and the team to try to reach deeper into Class 8 and Class 9 and get higher recoveries.
Q Okay. So the idea is, the more difficult it is to get the recoveries, the higher percentage you should get, because if you're successful then you should be rewarded accordingly? Is that kind of how it works?
A I'm not sure if difficult is the term, but it's a combination of both expertise, difficulty, and time.

MR. MCENTIRE: All right. Can you scroll down, please? Next page.
BY MR. MCENTIRE:
Q And here are your actual tier participations. They go -- you said basically nothing Tier 1, up through 6 percent. So Tier 1 is the 71 percent, right?

A It's .72 percent, and it's of the -- that's the first piece. You have to get to Tier 1. So if we had not -- I believe it's structured is if we don't get to Tier 1, for example, we don't hit the plan, right around the plan number of 71-and-change cents, then there wouldn't -- there wouldn't be upside.

So it was very much structured in a way that you had to perform. And then the better the performance, the bigger the percentages of the tier.

Q So, in theory, Mr. Seery, by the time you get down to Tier 4 and Tier 5, it's a little bit less certain that you're ever going to get there. Is that right?

A Well, out of the gate, going deeper was uncertain. It's a question of being able to execute well on the assets and being able to control the costs and being able to make distributions. It wasn't based on what we just got for the assets. It's actually based on actual distributions --

Q I understand that.

A -- to Class 8 and 9 claimants.

Q I understand that. And the idea is, is that it take a lot more effort -- the theory was it might take a lot more effort to get all the way to the bottom of Tier 5 to pay all the Class 9 claims, right?

A And maybe a little luck.

Q Yeah. And Class 10 is not even factored into this, is it?

A No, it is not.
Q And so you didn't consider Class 10. You stopped at Tier 5?
A That's correct.
Q So your entitlement to a 6 percent return, or a 6 percent bonus on the recoveries, you say it's there to incentivize you. You didn't expect that to actually happen, did you, when you signed this? Is that your testimony?
MR. STANCIL: I object to the form of the question. It mischaracterizes the agreement.
BY MR. MCENTIRE:
Q You didn't expect it to happen, did you, sir?
THE WITNESS: Well, the six --
THE COURT: Wait. I'm sorry. Could you rephrase the question?
MR. MCENTIRE: Sure.
BY MR. MCENTIRE:
Q Are you telling the judge that you really didn't expect that to happen and that's why you were entitled to a higher percentage?
A No. We didn't expect to reach Class 9 and go deep into Class 9, but we certainly held out the possibility that we could. And it's not six percent. It's six percent of the increment. These are cumulative. So you get .72 of Tier 1. You get 1.17 of Tier 2. And you can add those, and you earn

them when you've actually made the distribution, but you don't get paid until you get all your distribution or we're relatively done or there's a renegotiation. Because the Committee wanted to make sure that I didn't say, hey, I hit Tier 3, time to go, I got a better job.

Q So, Mr. Seery, if Farallon told Mr. Dondero that they wouldn't sell basically at any price because you said it was too valuable, and they rejected a 40 or 50 percent premium, if they said that, is that -- is that a lie?

A That I -- rephrase that, please. I don't -- didn't quite understand your question.

Q Yeah. You've heard the testimony that Farallon, Michael Linn, told Mr. Dondero that they were not going to sell their claim at any amount because you had told them it was too valuable. Is that a lie?

A I think that's -- yeah, I don't think that's true.

Q Okay. And obviously, if they're not going to be willing to sell at any amount, they must be pretty certain they're going to hit Tier 5. Would that just be a lie?

A That -- that conversation was before this negotiation. That -- there's no -- they could not have had any expectation, either when they had that conversation in May or when we had this discussion that I was going to hit Tier 5 and I hadn't hit Tier 5. And the idea that they wouldn't sell at any price is complete utter nonsense, because they're capped on what

they can get.
Q So if -- sure. Okay. So, but if Farallon told --
A But that's what you said.
Q If Farallon told Mr. Dondero that they wouldn't even sell at 130 percent of the purchase price because you told them it would be too valuable, is that a lie?
A I never told them it would be too valuable. I don't -- I don't know any of the other parts that you're saying, the 130 percent of an unknown number, some guess number that Mr. Dondero had. I never told them it would be too valuable. That would be their own assessment of where we were at the end of May 2021.
Q If they said that you told them not to sell, that it was too valuable, is that a lie?
A That's untrue, yes.
Q If they told him -- if they told him that he told you -- that you told them it was too valuable because of MGM, is that a lie?
A Yes.
Q How many shares of stock did Highland Capital own?
MR. MCENTIRE: Well, one second. What is my time? How much time do I have?
THE CLERK: Right now you're at --
MR. MCENTIRE: So I'm almost two and a half hours in?
THE CLERK: Just about. A little under.

BY MR. MCENTIRE:
Q I'm going to have to speed up here, Mr. Seery.
THE COURT: A little under two and a half, you said.
BY MR. MCENTIRE:
Q Mr. Seery, I want to make sure. Highland Capital owns interests in the CLOs. What is the CLOs' stake in the MGM stock, or what was it?
A Highland Capital does not own any interest in any of the CLOs it manages. It has a fee stream, and it can have certain deferred fees that it can get, but it didn't own any interest in any of the CLOs that it managed.
Q Fair enough. How about the portfolio companies?
A Did Highland Capital own interests in the portfolio companies?
Q Yes.
A Some of the ones Mr. Dondero listed, but they weren't portfolio companies. So he said OmniMax, but we didn't have any management of OmniMax. We just had debt that converted to equity, but we didn't control the -- the thing. That was during the case, the company.
Q Did Multistrat have an interest in MGM?
A Multistrat owned MGM, yes.
Q Okay. And did your company, Highland Capital -- your company -- Highland Capital have an interest in Multistrat?
A Highland Capital owns 57 percent of Multistrat, yes.

Q And did Highland Capital have an interest in any other portfolio companies that have an interest in -- had a stake in MGM?

A RCP. Restoration Capital Partners.

Q And do you recall what the value of that was?

A It shifted over time. I don't -- I don't know what time you're talking about.

Q And isn't it true that 90 percent of all the securities that Highland Capital owned at the time that the sale went public was roughly 90 percent of all of Highland Capital's securities?

MR. STANCIL: Objection, Your Honor. I don't know what that question is asking.

THE COURT: I don't understand it, either.

Could you rephrase?

MR. MCENTIRE: I'll try to.

BY MR. MCENTIRE:

Q At the time that the announcement was made about Amazon buying MGM in May of 2021, what percentage of all the securities did MGM comprise of the securities that were owned by Highland Capital?

A Of the securities that were directly owned by Highland Capital, it may have been -- I'm thinking of public or semi-public securities, the 150,000 or 170,000 that we had that were subject to the Frontier lien. Might have been almost all

of the securities that we owned. It wasn't -- it was a good position, but it wasn't a huge driver for the directly-owned shares. There was more value in the Multistrat and the RCP.

Q What percent of shares of all --

MR. STANCIL: Your Honor, I'm sorry, I'm having trouble hearing the end of Mr. Seery's answers. So I know it's not his --

THE WITNESS: I'm sorry.

THE COURT: Okay. If you could make sure you speak into the mic.

THE WITNESS: Yeah. I'm sorry.

MR. STANCIL: I'm having trouble with Mr. McEntire talking over the end of Mr. Seery's answers.

THE COURT: Ah.

MR. STANCIL: I'm having trouble following.

THE COURT: Okay.

MR. STANCIL: I apologize.

THE COURT: Okay. Could you --

MR. MCENTIRE: I didn't know I was doing that.

THE COURT: Well, --

MR. MCENTIRE: I'll try to do better.

BY MR. MCENTIRE:

Q Mr. Seery, of all the stock that Highland Capital owned in May of 2021, what percentage of that was (inaudible) stock?

A Hopefully this is clear. Highland Capital did not own a

lot of stock. Highland Capital did have a direct ownership interest in MGM, so that might have been the vast majority of the stock that Highland Capital owned. It did own interest in other entities, like its investment in RCP or its investment in Multistrat. But of the stock that it owned directly, that was probably it, and that's the one that was liened up to Frontier.

Q Mr. Seery, did Highland Capital own approximately 170,000 shares of MGM stock in May of 2021?

A Yes. You -- I'm sorry. You asked me what percentage, and I think I said roughly that amount of stock liened up to Frontier, and that that might have been almost all of the stock we owned.

Q Does Highland Capital own a direct interest in HCLOF?

A In HC --

Q HCLOF?

A HCLOF? Yes. Highland Capital owns a small direct interest, and a large indirect interest which we got through the settlement with HarbourVest.

Q And the entity in which you acquired the indirect interest, what's the name of that entity?

A I don't recall. It's a -- it's a single-shell special-purpose entity that we own all of it and it has no other assets.

Q And just to make sure that the record is clear, you deny

under oath that HCLOF has any interest -- or had any interest in MGM stock?

A HCLOF has never owned MGM stock and still doesn't own MGM stock. It's never owned it.

Q Um, --

A At least -- at least, as long as I've been in this case.

MR. MCENTIRE: One second, Your Honor, please.

(Pause.)

MR. MCENTIRE: I'm going to have to pass the witness because of time sensitivities, Your Honor, so I'll pass the witness at this time.

THE COURT: Okay. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery?

A Yes, sir.

Q You just covered a lot of what we would have covered, so I want to be really, really quick here. Okay? We're not covering old ground. Let's just start with the HarbourVest settlement. Do you recall that Mr. Dondero sent the email to you on December 17th?

A Yes.

Q Okay. When did you reach the agreement with HarbourVest on the settlement?

A December 10th.

Q Okay.

MR. MCENTIRE: Your Honor, I'd like to move into evidence Exhibit 31. Actually, let me lay a foundation first.

Can you give the witness --

MR. MCENTIRE: Is this a new exhibit?

MR. MORRIS: No. It's Exhibit 31.

MR. MCENTIRE: Can I see it, Tim, please?

MR. MORRIS: It's in your box.

MR. MCENTIRE: Give me a minute.

MR. MORRIS: Uh-huh.

THE COURT: Okay. We're about to focus on Highland Exhibit what?

MR. MORRIS: 31.

THE COURT: Okay.

MR. MORRIS: Do you have it, Your Honor?

THE COURT: I do.

BY MR. MORRIS:

Q Do you have it, Mr. Seery?

A I do, yes.

MR. MORRIS: Do you have it, sir?

MR. MCENTIRE: I do. Thank you.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just tell the Court what this is?

A This is an email chain. It starts from me to the other

independent directors, copying counsel, to outline the terms of the HarbourVest settlement that I had just made the offer to HarbourVest to settle on these terms on December 8th. And this was the product of a number of negotiations that had taken place over the prior weeks, and this was the final offer that I was making to them to settle.

Q Directing your attention to the bottom of the first page, the first email dated December 8, 2020 at 6:46 p.m., can you just read the first sentence out loud.

A I lost -- you lost me.

Q That begins, "As discussed yesterday."

A Oh. "As discussed yesterday, after consultation with John Morris" -- that would be you -- "regarding litigation risks, this evening I made an offer" -- it says "and," but it should have said "an" -- "offer to HarbourVest to settle their claims. The following are the proposed terms."

Q Okay. Just stop right there. And you were -- this is the report that you gave to the independent directors?

A The other independent directors.

Q Right.

A I was also one.

Q Right. And did Mr. Dubel respond?

A He did, yes.

Q And can you just describe briefly what your understanding was of his response?

A Dubel responds a couple hours after I sent the original email: "Jim, this basically looks like a $10 million -- net $10 million payment to HV." That's HarbourVest. "Is that correct? Does the 72-cent recovery include the $22-1/2 million that we get from the transfer of HCLOF interests? Remind me again, post-effective date, who is managing HCLOF?"

So I think my understanding was Mr. Dubel was querying me on some of the terms that I had set forth here, including that the value of the claim in our estimation was going to be about $9.9 million, meaning they would have a $45 million senior claim, a $35 million junior claim, and we thought, based on the values we had then, it was going to pay out about $9.9 million.

Q Okay. And was this offer accepted?

A Yes, it was.

Q When was it accepted?

A I think I just said. On -- on December 10th.

Q Okay. And did the terms that you described for the other independent directors on December 8th, did they change in any way at all from that reflected in this email until the time we got to the 9019 hearing?

A Not at all, no.

Q Okay. I see that you mention in here that you -- it says, quote, "The interests have a marked value of $22-1/2 million, according to Hunter Covitz." Do you see that?

A That's correct, yes.
Q Who's Hunter Covitz?
A Hunter Covitz was a Highland employee. He ran the structured products business. So he was responsible for making sure that the CLO we managed, which was AC7, was compliant and was -- with the indentures. He also was responsible for monitoring the -- what we call the 1.0 CLOs, even though they weren't really CLOs, they were more like closed-in funds. And he also kept track of the Acis -- CLOs that HCLOF had an interest in that were managed by Acis.
Q Okay. And do you recall how he conveyed to you the NAV?
A Well, I talked to him numerous times, so this wasn't our -- I didn't just call him up at the end and say, what's the NAV? I had had discussions with him while I was negotiating with HarbourVest. And at some point, he or someone -- he told me the amount, and at some point he gave me a NAV statement that actually showed the NAV of HCLOF, which at 11/30 was roughly $45 million.
Q Okay. Can you turn to Exhibit 31-A, the next document in the binder?
A Mine's completely blacked out.
THE COURT: I'm sorry, what number?
MR. MORRIS: 31-A.
THE COURT: Oh.
MR. MORRIS: And the first two pages are redacted

just because they're not relevant and they're business information.

BY MR. MORRIS:

Q But can you turn to the last page, sir?

A Yes.

Q Can you tell the judge what this is?

A So this is a net asset value statement from HCLOF. That's Highland CLO Funding, Limited. That's the Guernsey entity that -- that held these interests. And this is a net asset amount, and it shows what the net -- what the net asset value is as of this time on a carryforward basis of $45.191 million.

Q Okay. And where did you get this document?

A I believe I got it from Covitz. It's generated by an entity called Elysium, which is the fund administrator for HCLOF, and I believe they're out of Guernsey.

Q And did you rely on this document in setting the proposal to HarbourVest?

A Well, both the conversations with Covitz and the document. And frankly, HarbourVest got the same documents because they were -- they held a membership interest in HCLOF. So he -- Michael Pugatch knew what the NAV was.

Q And would Mr. Dondero or entities controlled by him who also have interests in HCLOF, is it your understanding that they would have also had this document available?

A All members would --

MR. MCENTIRE: Excuse me. Excuse me. I object to that question, the question being "and the entities controlled by Mr. Dondero." There's no foundation for this witness to answer a question like that.

BY MR. MORRIS:

Q Who else owned --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- an interest in HCLOF?

THE COURT: Go ahead.

THE WITNESS: It would have been DAF.

BY MR. MORRIS:

Q The DAF?

A Yeah.

Q Okay. Let's just ask this question. Is it your understanding that these NAV valuation reports were made to all holders of interests in HCLOF?

A Yes. And that would include the DAF. And I did leave off that there were three former Highland employees long gone, or at least not around at this point, who also owned very small interests, and they would have gotten those statements as well.

Q And does HCLOF also produce audited financial statements?

A It does, yes.

Q Can you go to Exhibit 60, please?

A Six zero?
Q Yes, sir. A couple of questions here. Is this a document that Highland would have received in the ordinary course of business?
A Yes, it is.
Q Okay. And what is the NAV depicted on this page as of the end of the year 2020?
A Well, you have to look through it, because this document is actually dated 4/21/21, --
Q Okay.
A -- which you can see on Page 10 where it's signed. And that shows a net asset value of $50.4 million as of 12/31/21. 12/20. I'm sorry. And -- but it wasn't prepared until -- the audits aren't done and we don't get this document until after the directors sign off in April.
Q Okay.
MR. MORRIS: And Your Honor, I move for the admission into evidence of these three HarbourVest-related documents, 30, 31-A, and 60.
MR. MCENTIRE: No objection.
THE COURT: They're admitted.
MR. MORRIS: Okay.
(Debtors' Exhibits 30, 31-A, and 60 are received into evidence.)
BY MR. MORRIS:

Q Okay. Let me move on. We've seen Mr. Dondero's email today. You've seen that before, correct?

A Yes.

Q Okay. What was your reaction when you got it?

A I was highly suspicious.

Q Why is that?

A Well, not to replow too much old ground, but this came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.

It also followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski being on it.

Furthermore, Pachulski had advised Mr. Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics.

And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

In addition, that followed the termination of the shared service arrangements, the approval of the disclosure statement, and the demand to collect on the demand notes that

Mr. Dondero and his entities were liable for.

So at that point, he'd been interfering with the business, he had threatened me, he was subject to a TRO, and I got this email and I was highly suspicious.

Q Did you ever share this email with anybody at Farallon?

A No.

Q Did you ever share this email with anybody at Stonehill?

A No. And just to be clear, not just the email, the contents. Never discussed it with them.

Q That was going to be my next question. Did you ever share any information about MGM with anybody?

MR. MCENTIRE: Objection. Leading.

MR. MORRIS: I'm asking the question.

MR. MCENTIRE: No, you're leading.

MR. MORRIS: This is the whole --

MR. MCENTIRE: You're leading the witness.

THE COURT: Overruled. Finish the question.

BY MR. MORRIS:

Q Did you ever share any information concerning with MGM with anybody at Stonehill before you learned that they had purchased claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. No, I did not.

BY MR. MORRIS:

Q Did you ever share any information with anybody at Farallon concerning MGM before you learned that they purchased their claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I did not.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

(Pause.)

THE WITNESS: You know, you just asked me something about Stonehill.

THE COURT: No.

THE WITNESS: I'm sorry.

BY MR. MORRIS:

Q Yeah. No question.

A I wanted to clarify one.

Q What did you want to clarify, sir?

A Certainly didn't share anything about this email, any of the contents of it. I don't know if I ever -- I don't know exactly when Stonehill bought their claims, and they were subject to the NDA to do the financing process. So I know when Farallon told me they had bought their claims and I know we never had any discussions at all before they acquired their claims, and I don't know when Stonehill got those -- their claims, so I don't know when -- what was in the data room or what -- what might have been discussed about MGM while they

were under an NDA.
Q Okay.
A But certainly nothing -- I never shared the contents of this email, the substance of this email, the email at all. That's what I wanted to clarify.
Q What data room are you talking about, sir?
A This was the data room related to the exit financing where we sought exit financing and ultimately got exit financing from Blue Torch Capital.
Q And who put together the data room?
A DSI, which was our financial consultants, and our finance team.
Q And why did you -- did you delegate responsibility for creating the data room to DSI and the members of your team you just identified?
A Yeah, of course.
Q How come?
A I don't really know how to put together a data room.
Q Did you -- did you direct them to put anything in the data room?
A Not specifically. We had a deck that we -- that certainly I worked on and commented on, which would have been a general overview of the -- of the post-reorganized Highland and the -- and the -- and the Claimant Trust. So I certainly commented on that. But the specific information in the data room, I

don't -- I never looked at it. I don't know what it is.
Q How many -- how many entities who were participating in the exit facility process wound up making bids or offers?
A There were five that signed NDAs. Three provided substantive proposals. One was verbal. That was Bardin Hill, who'd been contacting me throughout the case, and they do this kind of financing, and they submitted a competitive bid. Stonehill in writing, and then amended, a more aggressive one, in writing. And Blue Torch probably three, and the most aggressive.
Q And did you give the -- did you give the opportunity to your age-old friends at Stonehill?
A They're not my age-old friends. And no, they lost. They were second, they were close, it was a good real proposal, but they didn't win.
Q So, --
A Blue Torch won.
Q So is it fair to say that you -- did you pick the best proposal that you thought provided the best value for the company that you were managing?
MR. MCENTIRE: Your Honor, again, for the last ten minutes, we've had nothing but leading questions. And it just is --
MR. MORRIS: Fine. Happy to --
THE COURT: Sustained. Rephrase.

BY MR. MORRIS:

Q Why did you pick Stone -- why did you pick Blue -- Blue-?

A Blue Torch.

Q Blue Torch, over the other bids?

A It was the best bid. So, structurally, it was the least expensive, although they were extremely close. I had a lot of confidence in Blue Torch because this type of financing is what they do. And while you can never have a hundred percent confidence that if somebody goes through the -- this is an LOI, right, so this is a letter of intent. When they go further, they may -- they may not complete it. But I had a high degree of confidence that they would get there, because, again, that's what they do. And they were the -- they were just the better bid.

Q Okay. Do you recall that in Mr. Dondero's notes he wrote down that he was told that Farallon had purchased their claims in February or March?

A I saw that on what he claimed, yes.

Q And is that consistent with what you were told by Farallon in March?

A They told me they acquired the claims -- they had acquired the claims on March 15th, by email. I don't know if they acquired them in February or March. Or even January. I know they said they had them on March 15.

Q Did you ever speak with Farallon about anything having to

do with the purchase of their claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Not -- not before they sent me that email.

MR. MORRIS: I apologize. Withdrawn.

BY MR. MORRIS:

Q Before -- before learning of their purchase, had you had any discussions with them about potential claim purchases?

MR. MCENTIRE: Objection.

THE WITNESS: No.

MR. MCENTIRE: Leading.

THE WITNESS: I'm sorry.

THE COURT: Overruled.

THE WITNESS: No, I didn't.

BY MR. MORRIS:

Q Okay. Before you learned that Stonehill had purchased claims in the Highland bankruptcy, had you ever had any conversation with them about the potential purchase of claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I don't -- I don't --

THE COURT: Overruled.

THE WITNESS: I'm sorry. I don't -- I don't believe so, no.

BY MR. MORRIS:

Q Do you have any knowledge at all as to how the sellers went about selling their claims?
A I have some knowledge now, post-effective date, that I believe I have some understanding, but not a great one.
Q Did you ever communicate with any of the sellers about the potential sale of their claims prior to the time their claims were sold?
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I did have a conversation with Eric Felton who was the Redeemer representative on the Creditors' Committee. And it came out of one of the emails I got. I think it indicated that --
MR. MCENTIRE: Objection, hearsay, Your Honor. I mean, hearsay, Your Honor.
THE COURT: Okay.
MR. MCENTIRE: It's hearsay.
THE COURT: Okay. He's about to say something that's hearsay is the objection. Any response?
MR. MORRIS: I'm not offering it for the truth of the matter asserted. I'm offering it for Mr. Seery's state of mind and the extent of his communications. How about that?
MR. MCENTIRE: I don't see how you could offer it for anything other than for the truth of the matter asserted. It's coming from a third party, so I object to hearsay.

MR. MORRIS: Okay. You know what? We --
BY MR. MORRIS:
Q Other than the one conversation --
THE COURT: Are you withdrawing the question or do I need --
MR. MORRIS: Yeah. This is just --
THE COURT: Okay. You're withdrawing the question.
MR. MORRIS: I'll withdraw the question.
THE COURT: Okay.
BY MR. MORRIS:
Q Other than the one conversation with Mr. Felton, did you ever have a conversation with any seller prior to the time you learned that Farallon or Stonehill --
MR. MCENTIRE: Objection. Leading.
BY MR. MORRIS:
Q -- purchased the claims?
THE COURT: Overruled.
THE WITNESS: No.
BY MR. MORRIS:
Q Did you play any role in facilitating or recommending to Farallon or Muck that it purchase claims?
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: No. None whatsoever.
BY MR. MORRIS:

Q Did you play any role in facilitating or recommending that Stonehill or Jessup purchase claims?
A No.
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q All right. Let's just finish up with compensation. Can you go to Exhibit 41, please? Can you just identify that document for the Court?
A This is the -- it's a memorandum agreement that sits on top of an outline. It is the December 2 incentive compensation agreed terms for Highland Capital --
Q Okay.
A -- and the Trust.
Q And when was this signed?
A It would have been -- the date is December 6th.
Q And --
A 2021. I'm sorry.
Q Okay. And when did you and the Committee members begin discussing your compensation package?
A Shortly after the effective date, which was August 11, 2021.
Q And were there any negotiations during that intervening three- or four-month period?

A Considerable negotiations during that period, yes.
Q Can you go to the last page of Exhibit 41? Can you describe that for the Court? I know it's hard to read, but --
A I --
Q -- the numbers don't matter so much as the infor... you know, just, can you just describe --
A Yeah.
Q -- what's being conveyed?
A So it's very hard to read, but it says -- because it's small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal 2, Oversight Counter 2, and then it continues down. My recollection is that we had four or five rounds of back-and-forth that were meaningful. But it -- but it even took a detour in the middle, because it started with my proposal, which was pretty robust, and their response to me that they didn't like the structure or the amount, and so then we started talking about that. And then they -- after we were kind of hitting numbers and structure at the same time, they came back to me and said, stop, we've got to agree on the structure before we agree on the amounts.

MR. MCENTIRE: Your Honor, I'm going to object as it's hearsay and move to strike. This is -- he's not talking about the document. He's talking about something outside of the four corners of the document. I object to hearsay.

MR. MORRIS: Hearsay? There's no statement.

THE COURT: There was --

MR. MORRIS: It's a description of what happened.

MR. MCENTIRE: But he's actually referring to statements in his substantive comments.

THE COURT: Overruled. Okay.

MR. MORRIS: I move for the admission into evidence of Exhibit 41.

THE COURT: Any objection?

MR. MCENTIRE: That's the memorandum agreement, Mr. Morris? Is that it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: No objection.

THE COURT: Admitted.

(Debtors' Exhibit 41 is received into evidence.)

BY MR. MORRIS:

Q Can we go backwards to Exhibit 39, please? Can you describe for the Court what that is?

A This is a redacted copy of minutes of the board meeting on August 21 -- 26, 2021.

Q And there's a lot of stuff redacted there. Do you have an understanding as to why there is redactions?

A It would have nothing to do with these issues that we're discussing or the alleged *quid pro quo*.

Q Okay. Can you just read out loud the last portion that's unredacted on the second page, beginning with "Mr. Seery

reviewed"?
A It actually says, "Mr. Seery also presented the board with an overview of his incentive compensation program proposal, which would include not only Mr. Seery but the current HCMLP team. The terms and structure of the proposal had been previewed with the board in prior operating models presented by Mr. Seery. Mr. Seery reviewed the proposal and stated his view that the proposal was market-based and was designed to align incentive between himself and the HCMLP team on the one hand and the Claimant Trust beneficiaries on the other. The board asked questions regarding the proposal and determined that it would consider the proposal and revert to Mr. Seery with a counterproposal."
Q All right. When you were -- when you were shown one of these documents before, you were asked to identify Mr. Linn, but you weren't asked about the others. Do you see Richard Katz there?
A Yes.
Q Who's that?
A He's the independent member.
Q Did he play any role in the negotiation of your compensation package?
A Yes. He was actively involved.
Q Okay. And how about Mr. Provost? Who's he?
A He is the Jessup person. Jessup is the board member.

He's their representative on the board.
Q Okay.
MR. MORRIS: And I move for admission into evidence of Exhibit 39.
MR. MCENTIRE: No objection, Your Honor.
THE COURT: Admitted.
(Debtors' Exhibit 39 is received into evidence.)
BY MR. MORRIS:
Q Let's go to Exhibit 40, please. Can you just describe for the Court what that is?
A This is a subsequent board meeting minutes, August 30, 2021.
Q And can you just read into the record -- why are there redactions?
A Again, they would -- if there are redactions, it would have nothing to do with the issues that are being brought up in this motion.
Q And can you just read into the record the paragraph beginning, "Mr. Katz"?
A "Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board's counterproposal to the HCMLP incentive compensation proposal, including the review of the spreadsheet and summary of the counterproposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from

the Oversight Board. Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the -- and the HCMLP."

Q So they didn't accept your original proposal that you made in the earlier document?

A They did not.

Q Okay. And did negotiations continue?

A They did, yes.

MR. MORRIS: Before we go on, I move for admission into evidence Exhibit 40.

THE COURT: Any --

MR. MCENTIRE: No objection.

THE COURT: It's admitted.

(Debtors' Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Can you go to Exhibit 59, please? Can you describe for the Court what this is?

A This is an email string between me and the Oversight Board regarding the compensation proposal.

Q Okay. And directing your attention to the bottom, I guess, of the second page, there is an email from Mr. Katz dated October 26. Do you see that?

A At the bottom of the second -- oh, yes, yes.

Q Okay. Can you just read the sentence at the bottom of the

page beginning "We propose"?

MR. MCENTIRE: Well, Your Honor, I would, first of all, object to him just reading from the document until it's been put into evidence.

THE COURT: I'm sorry, say again?

MR. MCENTIRE: I would object to Exhibit --

THE COURT: We can't pick things up on the record when you don't speak in a mic.

MR. MCENTIRE: I object to him simply reading from the document before the document is offered into evidence.

MR. MORRIS: Okay.

MR. MCENTIRE: Accepted into evidence.

MR. MORRIS: Sure. I'd move it into evidence.

MR. MCENTIRE: I object as hearsay.

MR. MORRIS: This is a present sense recollection -- recorded. It's a clear business record. It's a negotiation that's happening over time. Mr. Seery is here to answer any questions about authenticity.

MR. MCENTIRE: Well, first of all, it's an email string involving communications with third parties. That's hearsay in and of itself. And it's not been established that this is a business record. And Mr. Morris's statements to that effect, frankly, don't carry his burden. There's internal hearsay contained throughout the document, Your Honor, even if it is a business record.

MR. MORRIS: Your Honor, just to be clear, let me respond.

THE COURT: Uh-huh.

MR. MORRIS: Exceptions to hearsay rule. 803(1) present sense impression; (2) -- (3) existing mental impression, state of mind about motive, (5) recorded recollection, (6) records of regularly-conducted activity, or Federal Rule of Evidence 807, residual exception for trustworthy and probative evidence. I'll take any of them.

MR. MCENTIRE: None of them apply.

MR. MORRIS: Okay.

THE COURT: Okay. Overruled.

MR. MORRIS: Thank you.

THE COURT: I admit it. 59's admitted.

(Debtors' Exhibit 59 is received into evidence.)

BY MR. MORRIS:

Q Can you just read that last sentence at the bottom of that page?

A This is from Rich Katz to me.

Q Uh-huh.

A (reading) We propose doing this in two stages. First, we'd like to come to agreement on structural, underscored, elements of the ICP.

ICP means incentive compensation program or plan.

Only after we'd done that, when the board had greater

understanding of what plan they were pricing, would we haggle out the specific numbers, underscore, tier attachment points, and percentage participation in each tier.

Q Okay. And going to the right-hand part of that, do you see where it says, Salary J.S. Only?

A Yes.

Q Can you just, you know, generally describe for the Court what the debate is or the negotiation that's happening on that particular point?

A Well, this was brought up earlier. The salary was $150,000 a month. That was the same salary that I'd had during the case that was approved by the Court. It had been approved by the Committee, approved by the other independent members. That was continuing. It was also contained as an actual base salary in the plan and the Claimant Trust Agreement, and they were never amended.

The Committee came back to me and said, we'd like that to step down. And they'd like it to step down on a definitive specific schedule, because they had a view that that would incentivize me to work faster to make distributions before the stepdown and that I wouldn't linger in the role. And the yellow --

Q Can you just read the yellow out loud?

A That's --

Q Read the whole thing.

A That's my response.
Q Read the whole thing.
A (reading) Based on the required expertise, volume, and personal risk of the work today, I do not think that any formulaic reduction in base comp is appropriate. With the complexity and amount of issues that I have to manage on a daily basis, I currently do not have capacity to take on significant outside work. Of course, things can change. If they do, I am open to discussing reduction in the base. I have no interest in sitting around doing nothing, having no risk, and collecting the full base compensation. We can include prefatory language and an agreement to revisit our terms, but I do not see an avenue to set parameters to lock in an agreement for the future at this time.
And then there's another paragraph on severance.
Q You can stop there.
MR. MORRIS: I have no further questions.
THE COURT: All right. Pass the witness.
MR. MCENTIRE: Do you have any questions?
A VOICE: No.
MR. MCENTIRE: Okay. How much time do I have, please?
THE CLERK: So, the limit is at two hours and 32 minutes.
MR. MCENTIRE: All right.

REDIRECT EXAMINATION

BY MR. MCENTIRE:

Q Just a couple questions very quickly, Mr. Seery. Highland Capital Management paid HarbourVest cash as part of the settlement, correct?

A That's incorrect.

Q There was no cash component at all?

A There was not.

Q And in connection with the HarbourVest settlement, HarbourVest transferred an interest in HCLOF to Highland Capital or an entity affiliated with Highland Capital; is that not correct?

A That's correct.

Q And that -- that entity -- and HCLOF, and HCLOF had an interest in various CLOs, correct?

MR. MORRIS: Your Honor, I object. This is beyond the scope of my cross, or redirect, however you prefer.

MR. MCENTIRE: Well, you spent a lot of time on HarbourVest. I'm just trying to clear it up.

MR. MORRIS: I didn't say the word CLO. I did not say the word CLO.

THE COURT: Overruled. He can go there.

If you'd please move the mic towards your voice.

BY MR. MCENTIRE:

Q And HCLOF had an interest in various CLOs, correct?

A I believe it had an interest in five CLOs. Oh, that's not true. It had an interest in five of the 1.0 CLOs. It also owned one hundred -- basically, somewhere between 87 and a hundred percent of Acis 3, 4, 5, 6, and 7, which is about a billion dollars of CLOs to 10 (inaudible) leveraged vehicles, and they owned basically all the equity, so that was the driver of the value.

Q And various entities that were -- I mean, some of these various CLOs had an interest in MGM stock, correct?

A The 1. -- the Highland 1.0s did. The value drivers I just described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.

Q But one of them did have an interest in MGM?

A That's not correct.

Q What did you just say?

A 3, 4, 5, 6, and 7 did not have any interest in MGM.

Q Were there any CLOs that had an interest in MGM?

A Some of the 1.0 CLOs did, --

Q I see.

A -- yes.

MR. MCENTIRE: Pass the witness.

MR. MORRIS: No further questions.

THE COURT: Mr. Seery, I want to ask you one thing.

THE WITNESS: Yes, Your Honor.

EXAMINATION BY THE COURT

THE COURT: We dance around it a lot. The Highland

ownership of MGM stock. If think -- if you could confirm I've heard this correct -- you said Highland itself owned 170,000 shares that were subject to a Frontier Bank lien?

THE WITNESS: Yes, Your Honor. I believe that's the right amount. So, Highland directly owned about 170,000 shares. Those were liened up to Frontier. They were -- they were never transferred. Highland never sold any MGM stock.

THE COURT: Okay. So Frontier still holds it or what?

THE WITNESS: No. In fact, post-effective -- I believe it was post-effective date, and with cash generated, we -- we paid off the Frontier loan, --

THE COURT: Uh-huh.

THE WITNESS: -- released that lien, and then we held those shares in MGM until the merger was consummated.

THE COURT: Okay.

THE WITNESS: So we tendered our shares into the -- into the merger and got the merger consideration, which was cash.

THE COURT: Okay. And so there was that. But other than that, you said Highland owned 50 percent of Multistrat, which owned some MGM stock?

THE WITNESS: Multistrat had a -- I don't recall the amount, but a material amount of MGM stock. That also -- so, Highland owned 57 percent of Multistrat. Is also the manager

of Multistrat.

THE COURT: Uh-huh.

THE WITNESS: Multistrat did not sell any MGM stock. It also tendered them into the merger as well.

THE COURT: Okay. And then you said Highland owned some percentage of Restoration --

THE WITNESS: Restorations Capital Partners.

THE COURT: -- Capital Partners, which owned some MGM stock?

THE WITNESS: Similarly, Highland is the manager of what we call RCP. RCP owned a material amount of MGM stock. RCP did not sell any MGM stock. However, in 2019, you'll recall that Mr. Dondero sold $125 million of stock postpetition out of RCP. It was MGM stock. He sold it back to MGM. We had a -- we had a hearing on it, because subsequently the Independent Board learned about it, the Committee learned about it, they had not -- it had not been disclosed, but there was a -- what we thought was a binding agreement with MGM, and MGM indicated that they were going to hold us to it, and so we had a hearing about approving that transaction. The Committee was not happy.

THE COURT: Okay. I'm fuzzy on when that was. You said?

THE WITNESS: That would have been in early 2020, probably April-ish timeframe.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE WITNESS: The transaction was in November, I believe.

MR. MORRIS: If it's helpful, Your Honor, you can find it at Docket 487.

THE COURT: Okay.

MR. MORRIS: I think that's the objection from the Committee where the issue was -- comes up at least at one time.

THE COURT: Okay. And then I think this is the last category I heard, that HCM and its specially-created sub owned just over 50 percent of HCLOF, and it in turn owns interest in a lot of CLOs, and a few of those, what you call the 1.0 CLOs, did own some MGM stock?

THE WITNESS: That's correct. So if you look on the audited financials that we had introduced into evidence, you'll see actually every asset that HCLOF owns. There's no MGM in there. It does own interest. There were minority interests in five or six of the 1.0 CLOs. Grayson, Greenbrier, Gleneagles, Brentwood, Liberty, and one other. And it had interest in those, but it never owned any MGM stock and it never traded any MGM stock. It didn't own any.

THE COURT: All right. Did I cover the universe of what MGM stock was owned by Highland or something Highland had

an interest in?

THE WITNESS: Yeah. So, the ones that HCLOF had an interest in that I just listed, those -- Jasper was the other one. I apologize. The -- they owned -- they owned MGM stock among their other -- they had a lot of other assets. The other CLOs, the 1.0 CLOs that Highland had, every one of them owned MGM stock. None of them sold or bought any stock. Those all tendered into the merger as well. Highland did not own any interest in any of those entities.

THE COURT: Uh-huh.

THE WITNESS: It just managed them.

THE COURT: Okay. And this is my last question. Someone brought up or it came up today that exactly two years ago today -- I didn't remember we were on an anniversary of that -- but was when we had a hearing, and I think it was a contempt hearing, but I had, I guess, read in the media, like many other human beings, an article about the MGM-Amazon transaction, and I had said I had hope in my heart and brain that this could be an impetus or a triggering event for maybe a settlement. And that was kind of quickly pooh-poohed, if you will.

Remind me why I was quickly persuaded, oh well, I guess that's not going to happen. I just can't remember what I heard that day.

THE WITNESS: Well, it was widely known that

Highland, meaning not the 171,000 --

THE COURT: Uh-huh.

THE WITNESS: -- but the entities that Highland or related entities, including DAF, the other Dondero entities, controlled a lot of Highland stock, as even Mr. Dondero said between Anchorage --

THE COURT: You mean MGM?

THE WITNESS: MGM, I'm sorry. Between -- there were only five major holders. There was the two we just mentioned and Davidson Kempner and Monarch and Owl Creek, and just a few other big holders.

And so Your Honor would have learned it from the case, but you also would have learned it from the paper, that any time a holder is mentioned, it's first Anchorage, because they owned the biggest piece, and Kevin Ulrich, who was the chairman of Anchorage, was also the chairman of MGM. And then Highland was always mentioned.

The reason that it didn't have some great amount of capital that went on to Highland, although there was money from RCP and there was money from MGM, is Highland doesn't own the stock that's -- or interests in the 1.0 CLOs that owned all of it. We just manage it.

THE COURT: Uh-huh.

THE WITNESS: And that goes to various other entities, including, in large part, to Dondero entities. So

there wasn't a big windfall to Highland from that.

The possibility of some upside from HCLOF, because it owned small interests in those five, there was some value in that, but a lot of it got tied up in the litigation that other entities, Dondero entities, are bringing against U.S. Bank and Acis, which has tied up everything in that -- those distributions.

THE COURT: Okay. All right. Thank you. You are excused from the stand.

THE WITNESS: Thank you, Your Honor.

MR. STANCIL: I owe you a docket number, Your Honor. You said don't let us leave before we give you a docket number for that second contempt order. We promised to come back. It was #2660.

THE COURT: Okay. Got it.

MR. STANCIL: Which -- did we move that into evidence?

MR. MORRIS: No. We asked the Court to take judicial notice.

THE COURT: I will take judicial notice of 2660, --

MR. STANCIL: Thank you, Your Honor.

THE COURT: -- I already said. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

(The witness steps down.)

THE COURT: All right. Are you going to have any other evidence, Mr. McEntire?

MR. MCENTIRE: Your Honor, as I respond to your question, I think we have 30 -- approximately 30 minutes left.

THE CLERK: Twenty-six, yes.

MR. MCENTIRE: Twenty-six. We do have another witness. We also have a closing final argument. And we also have an opportunity -- we want to reserve an opportunity for our experts that is still under advisement.

So my first action would be to ask for an extension of time, or we would like to add to our time limit. Instead of just three hours, we'd like to increase the time so we can accomplish all these things.

I mean, if the Court is unwilling to give us additional time, then I will be forced not to call another witness. I will move to a very short final argument. I need to preserve some time for my experts, should you allow them to testify.

THE COURT: Well, --

MR. MORRIS: May I respond?

THE COURT: -- you don't have to preserve time. I'm either going to allow you to put on your experts, and we said 30 minutes/30 minutes, --

MR. MORRIS: That was what I was going to say, Your Honor.

THE COURT: Okay.

MR. MORRIS: There's no prejudice here. Nobody's being harmed. There's no appellate issue. I thought we were really clear. Everybody gets their three hours today. We will file our reply brief on Monday. The Court will determine both whether it needs to hear expert testimony and whether or not our motion should be sustained. If the Court denies the motion, we'll take a couple of depositions and each side will get whatever period of time the Court orders.

But, you know, the attempts to create an appellate record are just -- you know, that's not -- there's no issue here. He can -- he's got 26 minutes. He can put on his witness, he can make his closing in the 26 minutes that they've always had.

THE COURT: All right. Well, we have --

MR. MCENTIRE: May I caucus? May I caucus very quickly, Your Honor?

THE COURT: Okay. Uh-huh. And while you're caucusing, we have our game plan on the experts. We know how that's going to happen. And I'm not extending the three hours.

MR. MORRIS: (sotto voce) We have 62 minutes?

(Pause.)

MR. MCENTIRE: Your Honor, accordingly, I'll just -- we'll move into a final argument at this time.

THE COURT: Okay. So you rest?

MR. MCENTIRE: I rest.

THE COURT: All right.

MR. MORRIS: We call Mark Patrick.

THE COURT: All right. Mr. Patrick, you've been called to the witness stand.

MR. MORRIS: I just need to find my examination notes. Just give me one moment, please.

THE COURT: All right. Please raise your right hand. Could you remain standing, please.

(The witness is sworn.)

THE COURT: All right. You may be seated.

MARK PATRICK, DEBTORS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Hi, Mr. Patrick.

A Hello.

Q Did you ever meet with anybody at the Texas State Securities Board?

A No.

Q Do you know if -- do you know anybody who ever met with anybody at the Texas State Securities Board concerning Highland?

A Yes.

Q And who met with the Texas State Securities Board concerning Highland?

A Ronnie (phonetic) Patel.

Q And is that a lawyer?
A Yes.
Q Do you know who retained Mr. -- that lawyer?
A Yes.
Q Who retained that lawyer?
A The DAF, the Charitable DAF Fund. Or one of its entities.
Q Okay. And is it your understanding that the DAF Fund or one of its charitable entities filed a complaint with the Texas State Securities Board?
A Yes.
Q Okay. Thank you very much. Does Hunter Mountain owe any money to Mr. Dondero?
A No.
Q Is there a promissory note that's outstanding that Mr. Dondero has pursuant to which Hunter Mountain owes him $60-plus million?
A No.
Q Who created Hunter Mountain?
A Well, I don't recall specifically. I just recall the facts that, when Hunter Mountain was created, Thomas Surgent, the chief compliance officer of Highland Capital Management, who was representing the Dugaboy Investment Trust as well as Highland Capital legally with respect to that transaction, requested to Rand that the Hunter Mountain Investment Trust be created for purposes of Highland filing its ADV with the SEC.

It was my understanding that when the ADV would be filed, sort of the ownership change would -- chain would stop at Hunter Mountain.

Q Okay. Dugaboy is Mr. Dondero's family trust, correct?

A No. But I'll help you along. Just please use the full name of the trust.

Q If I refer to the Trust, will you know that that's -- is that for the Hunter Mountain Investment Trust, or do you want me to use trust --

A There's no entity called Dugaboy. Just Dugaboy. There's not.

Q Okay.

A It's a shorthand. I'm --

Q Okay. I'll refer to Dugaboy then, okay?

A What are we referring to?

Q The trust known as Dugaboy.

A Okay. Fair enough. Go ahead.

Q Okay. Did Dugaboy contribute a portion of its ownership interest in Highland to the Highland -- to the Hunter Mountain Investment Trust?

A Contribute? No.

Q Did it transfer?

A Yes.

Q And did it receive in exchange a promissory note from Hunter Mountain?

A Yes, it did.
Q Okay. And Mr. Dondero is the lifetime beneficiary of Dugaboy, correct?
A Yes and no. It's a placeholder -- a placeholder provision that's never been used.
MR. MCCLEARY: Your Honor, pardon me. Pardon me. Objection, relevance, Your Honor.
THE COURT: Relevance?
MR. MORRIS: This is -- we've been told so many times that Mr. Dondero has no interest in this case, he has nothing to do with Hunter Mountain. He's the lifetime beneficiary of Dugaboy. And if I --
THE WITNESS: That provision has never been invoked. He's received no money through that provision.
THE COURT: Okay. Just wait. We're resolving --
MR. MORRIS: Right.
THE COURT: -- an objection at the moment.
BY MR. MORRIS:
Q Can we turn to Exhibit 51?
THE COURT: I'm still working on the objection.
MR. MORRIS: I'm going to try and lay a foundation. Okay?
THE COURT: Okay. So he's withdrawing the question.
MR. MCCLEARY: He's withdrawing the question? Okay.
THE COURT: Okay.

BY MR. MORRIS:

Q You have a binder in front of you, sir. Can you go to Exhibit 51?

THE COURT: And this is Highland's Exhibit 51?

MR. MORRIS: Yeah.

THE COURT: Okay.

BY MR. MORRIS:

Q And is that a promissory note that was made --

A Yes, it is.

Q -- that was made by Hunter Mountain in favor of Dugaboy back in 2015?

MR. MCCLEARY: Objection, relevance, Your Honor.

MR. MORRIS: I'm trying to connect Mr. Dondero to Hunter Mountain.

THE COURT: Okay. Overruled.

THE WITNESS: Yeah. It's a secured promissory note with the amount of approximately $62.6 million signed by Beacon Mountain, LLC, --

MR. MORRIS: Uh-huh.

THE WITNESS: -- as administrator for Hunter Mountain Investment Trust.

BY MR. MORRIS:

Q Okay. And as the -- what's your role with Hunter Mountain today?

A And it's in favor, just to answer your question, it's in

favor of the Dugaboy Investment Trust. That's where I was just being a little stickler --

Q I appreciate that.

A -- previously. Sorry.

Q I do.

A Okay. What is your question?

Q What's your role with Hunter Mountain today?

A I am the administrator.

Q When did you become the administrator?

A On or about August of 2022.

Q Okay. How did you become the administrator?

A Through the acquisition of Rand Advisors.

Q And does Hunter Mountain have any employees?

A No.

Q Does it have any operations?

A No.

Q Does it generate any revenue?

A Not -- not currently.

Q Okay. Did it generate any revenue in 2022?

A No.

Q Does it own any assets?

A Yes.

Q What does it own?

A It has -- it's my understanding it has a contingent beneficiary interest in the Claimants Trust.

Q And that's the only asset it has, right?
A Correct.
Q So that if it -- if that interest has no value, then Hunter Mountain has no ability to pay the Dugaboy note. Fair?
A (sotto voce) If that interest has no value?
That is correct.
Q Okay.
MR. MORRIS: I move Exhibit 51 into evidence.
MR. MCCLEARY: Your Honor, relevance. Objection.
THE COURT: Your response?
MR. MORRIS: Mr. Dondero desperately needs Hunter Mountain to win in this lawsuit because otherwise his family trust will get nothing on this $63 million note.
THE COURT: Okay. Overrule the objection. It's admitted.
(Debtors' Exhibit 51 is received into evidence.)
BY MR. MORRIS:
Q Neither you or any representative of Hunter Mountain has ever spoken with any representative of Farallon, correct?
A Correct.
Q Neither you nor any representative of Hunter Mountain has ever spoken with anybody at Stonehill, correct?
A Correct.
Q You have -- neither you nor Hunter Mountain have any personal knowledge about a *quid pro quo*, correct?

A (sotto voce) Nor Hunter Mountain have any personal knowledge about a *quid pro quo*.

Correct.

Q Neither you nor anybody at Hunter Mountain have any personal knowledge about how Mr. Seery's compensation package was determined, correct?

A Correct.

Q Neither you nor anybody at Hunter Mountain had any knowledge about the terms of Mr. Seery's compensation package until the Highland parties voluntarily disclosed that in opposition to the Hunter Mountain motion, correct?

A No. I --

MR. STANCIL: Objection, relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. I seem to -- I seem to have an awareness that the performance fee was amended at a certain time post-confirmation, or, you know, around the confirmation time period. And so that's with respect to the compensation. I -- just myself.

BY MR. MORRIS:

Q Can you tell Judge Jernigan everything you know or everything you knew before receiving Highland's opposition to this motion about Mr. Seery's compensation as the CEO of the Reorganized Debtor at the Claimant Trustee?

MR. MCCLEARY: Objection, Your Honor. That's

overboard and an unclear question.

THE COURT: Overruled. He's gone through some specific things now. I guess he's just trying to encompass anything we haven't covered.

THE WITNESS: Yeah. I had a -- I personally had a general understanding that Mr. Seery's compensation changed after the claims trading to put in a performance-based-type measure. But I do recall that it was always very -- it was unclear exactly the terms.

BY MR. MORRIS:

Q Okay. Did you learn anything else?

A Such as?

Q Just, did you ever learn anything else about Mr. Seery's compensation package that you haven't testified to yet?

MR. STANCIL: Your Honor, objection. Vague.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Okay. Neither you nor Hunter Mountain has any personal knowledge whatsoever about any due diligence that Stonehill did in connection with the purchase of claims, correct?

MR. MCCLEARY: Your Honor, he's getting into allegations in the complaint which involve attorney work product, so we object on the basis of invading the attorney work product.

THE COURT: Overruled.

THE WITNESS: Can you restate the question again?

BY MR. MORRIS:

Q Yes, sir. Neither you nor Hunter Mountain have any personal knowledge as to what due diligence Stonehill did before purchasing its claims in this case, correct?

MR. MCCLEARY: Objection. Attorney work product. Invasion of that. Could I --

THE COURT: I just ruled.

MR. MCCLEARY: I understand.

THE COURT: I just --

MR. MCCLEARY: Could I have a running objection to this line of questioning on that basis, Your Honor, invasion of attorney work product?

THE COURT: Why don't you explain why it's attorney work product. I'm missing --

MR. MCCLEARY: Because they might -- he would have knowledge from the efforts and investigation through attorneys in the case. I assume he's not asking -- you can't separate that, potentially. So he's getting into attorney work product.

MR. MORRIS: I'm asking for facts.

THE COURT: He's asking for facts. I overrule.

BY MR. MORRIS:

Q Can you answer the question, sir?

A Yeah. I'm not aware -- I'm not personally aware of how much work Farallon did, or Stonehill.
Q You have no knowledge whatsoever about the diligence Stonehill did before purchasing its claims, correct?
A Well, I would generalize now is that they did nothing.
Q And that's on the basis of Mr. Dondero's testimony, correct?
A I would just call it on a basis of our general inquiry, which would be including, in part, Mr. Dondero's testimony.
Q What else are you relying upon for your conclusion that you just described other than Mr. Dondero's? What other facts?
A Yeah, we -- yeah, we have not uncovered any facts that indicated that they did conduct any due diligence of any sort.
Q Okay. And are you -- do you have any personal knowledge as to what Farallon did in connection with its due diligence prior to buying its claim?
A Yeah. We have not been able to find any facts that would suggest that Farallon conducted any due diligence of any kind.
Q Okay.
MR. MORRIS: One second, Your Honor.
(Pause.)
BY MR. MORRIS:
Q Who's paying Hunter Mountain's legal fees?
A Hunter Mountain is paying -- is legally obligated and

paying its own legal fees.

Q If it generates no income and its only assets is the interest in Highland, where is it getting the funds to pay legal fees?

MR. MCCLEARY: Objection, Your Honor. This is irrelevant and invades the attorney-client privilege.

MR. STANCIL: Your Honor, I'm happy to read a Fifth Circuit case that says the identity of a third-party payer of attorneys' fees is not privileged. I would refer them to *In re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit case. I can read from Judge Jones' opinion, but you tell me how much you want to hear on this.

THE COURT: Okay. I overrule your objection. He can answer.

THE WITNESS: There is a settlement agreement by Hunter Mountain Investment Trust as well as the Dugaboy Investment Trust that provides for the payment of attorney fees.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Okay. Cross?

MR. MCCLEARY: Yes, Your Honor, briefly.

CROSS-EXAMINATION

BY MR. MCCLEARY:

Q Mr. Patrick, how would you describe Mr. Dondero's relationship with Hunter Mountain Investment Trust today?

A None.
Q You were asked some -- let me ask you about litigation, and litigation involving the sub-trust. Has Hunter Mountain been involved in litigation with Mr. Kirschner?
A Yes.
Q Okay. And what is your understanding of Mr. Kirschner's role?
MR. MORRIS: Your Honor, while I would love for them to continue --
MR. MCCLEARY: He's the --
MR. MORRIS: -- to use their time, I object that it's beyond the scope of my examination. They passed on the witness. They rested their case. He should be limited to the scope of my inquiry.
THE COURT: Okay. How does this tie to direct?
MR. MCCLEARY: Your Honor, it -- just very generally. This is --
THE COURT: Okay. I need to know how it ties to the direct.
MR. MCCLEARY: This doesn't tie directly to the direct, Your Honor.
THE COURT: Then it's beyond the scope, you acknowledge?
MR. MCCLEARY: Yes, Your Honor.
THE COURT: Okay. Sustained, then.

MR. MCCLEARY: Okay.

BY MR. MCCLEARY:

Q Mr. Patrick, has Hunter Mountain Investment filed any litigation as a plaintiff other than its efforts to be a plaintiff in this lawsuit and its action as a petitioner in the Rule 201 matter earlier this year in Dallas state court?

A The 202.

Q 202, yes.

A No, it has not.

Q All right. And then it's -- has it been a party, then, to any other litigation other than the efforts to file this action, the Rule 202 action, and has it been a defendant in any lawsuits?

A To my understanding, no.

Q Is it involved as a defendant in the Kirschner litigation?

A Yes.

Q Mr. Kirschner is suing Hunter Mountain; is that correct?

A That is correct.

Q Okay. So, is Hunter Mountain a vexatious litigant?

MR. MORRIS: Objection, Your Honor. This is now really beyond the scope. We're not doing -- this is -- we're not doing it. I'm not letting -- because there's a vexatious litigant motion pending now in the district court right now before Judge Starr. This has nothing to do with anything I asked.

THE COURT: Okay.

MR. MCCLEARY: They're trying to draw --

THE COURT: You've already asked him is it a party in any other litigation besides the 202 and this attempted one, so where are we going with this?

MR. MCCLEARY: Well, they're just trying to draw Mr. Dondero into this and -- this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed -- attempting to file this action and a Rule 202 proceeding. So they're not involved in a lot of litigation and they're not a vexatious litigant.

THE COURT: Okay. I think I'll sustain that and we can just move on.

MR. MCCLEARY: Okay. Then I'll pass the witness. Thank you, Your Honor.

THE COURT: Okay. Any redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right. You are excused, Mr. Patrick.

(The witness steps down.)

THE COURT: Anything else?

MR. MORRIS: Just a time check for both sides and let's get to closings.

THE COURT: Okay. Caroline?

THE CLERK: Movant has 23 minutes left and the Respondents have 47.

THE COURT: 23 and 47. Any other evidence from the Respondents?

MR. MORRIS: That is a fair question.

(Discussion.)

MR. MCCLEARY: Your Honor, I just want to confirm that all the exhibits that they did not object to have been admitted into evidence.

THE COURT: All right. Well, let me --

MR. MCCLEARY: We do offer them.

MR. MORRIS: Oh.

THE COURT: Hang on.

MR. MORRIS: Did I get Exhibit 45, Your Honor?

THE COURT: Just a moment. I'm doing two things at once here. 45 is in.

MR. MORRIS: Okay.

THE COURT: All right. On HMIT's exhibits, okay, first, as we all know, 29 through 52 are carried until -- if we have another hearing with the experts.

(HMIT's Exhibits 29 through 52 carried.)

THE COURT: I'm showing we have -- and speak up if anyone questions this -- I show that we have Hunter Mountain Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26 through 38, and 53 through 57, 64, 65, and then 67 through seventy --

(HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

67-70 are received into evidence.)

MR. MCCLEARY: Your Honor, I apologize. From 36 -- 26 to 32 are in?

THE COURT: I believe that was part of the stipulation, Mr. Morris, right?

MR. MCCLEARY: Yes.

MR. MORRIS: I think that's right.

THE COURT: Okay.

MR. MORRIS: We really didn't object to very many.

THE COURT: Yes.

MR. MCCLEARY: That would be 25, too. That would include 25?

MR. STANCIL: No. Objection. 25 is not --

THE COURT: It's not admitted.

MR. STANCIL: It's not in evidence.

THE COURT: 25 and 24 were not admitted.

MR. MORRIS: Correct. Those are my emails.

THE COURT: Okay. So --

MR. MCCLEARY: 25 is an article.

THE COURT: Your 25 was John Morris Email Re: Text Messages dated March 10, 2023.

MR. MCCLEARY: Okay.

THE COURT: Okay. I can't remember where I left off. I think I left off -- I'll just repeat after the expert exhibits that are carried. I've admitted 53 through 57. I

have admitted 64, 65, 67 through 71.

(HMIT's Exhibit 71 is received into evidence.)

Now, I'm not sure if I ended up admitting 72. That was the articles. I can't remember if you stipulated on that finally.

MR. MORRIS: I said they --

MR. MCCLEARY: They had no objection.

MR. MORRIS: -- they come in --

THE COURT: Not for the truth of the matter asserted.

MR. MORRIS: -- self -- exactly.

THE COURT: Okay.

MR. MORRIS: Self-authenticating.

THE COURT: So 72 is in.

MR. MCCLEARY: Okay.

(HMIT's Exhibit 72 is received into evidence.)

THE COURT: Then we had some pleadings. I think 73, 74, 75 are in, but again, not for the truth of the matter asserted in any advocacy on 73 and 74. And then 77, 78, 79 are in. And that's it.

(HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received into evidence.)

MS. DEITSCH-PEREZ: Your Honor, I didn't make an appearance, but I was taking notes (inaudible).

MR. MCCLEARY: Your Honor, I believe 80 should be in.

MR. MORRIS: No objection to 80. It's on our -- it's

part of our Exhibit 5.

THE COURT: Okay. 80 is in. Admitted.

(HMIT's exhibit 80 is received into evidence.)

MR. MORRIS: Yeah. That's really Section A of that thing that I gave you this morning.

THE COURT: If Ms. Deitsch-Perez wants to consult with the Hunter Mountain lawyers, she can. I don't know --

MR. MORRIS: Can I go through quickly mine, Your Honor? Because we actually never had the opportunity to put our exhibits in.

THE COURT: Okay. Let's make sure we're to --

MR. MORRIS: Okay. I'm sorry. I'm sorry.

THE COURT: -- closure on the Hunter Mountain exhibits.

MR. MORRIS: I'm sorry.

THE COURT: Anything I said that you disagree with? I don't think --

(Pause.)

THE COURT: Okay. Let's hurry up. What is the controversy?

A VOICE: Roger? The Court's addressing you.

MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just a little unclear of whether you have Exhibits 21 through 25 admitted.

THE COURT: I have 21, 22, and 23. Not 24. Not 25.

Okay. Anything else?

MR. MCCLEARY: Okay. Then we do offer 24 and 25.

THE COURT: You offered them. I did not admit them.

MR. MCCLEARY: Okay. 76. I believe -- was that -- you're carrying?

MS. DEITSCH-PEREZ: Carried.

MR. MCCLEARY: You're carrying that?

THE COURT: Okay. I carried that and --

MR. MCCLEARY: It's part of the expert issue.

THE COURT: Okay. Yes, part of the expert. So it's carried.

(HMIT's Exhibit 76 is carried.)

(Pause.)

MR. MCCLEARY: I understand you've admitted 53 through 83, although some of them have now not been approved.

THE COURT: All right. Well, we need to clarify. 58 through 63, you think you offered them and I admitted them, but not for the truth? I remember that being discussed for 58 through 63. Are you actually offering them?

MR. MCCLEARY: Yes. 58 through 63.

THE COURT: All right. And Mr. Morris, you ultimately agreed that yes, but not for the truth of the matter asserted?

MR. MORRIS: That's right, Your Honor.

THE COURT: Okay. So they are admitted. Okay.

(HMIT's Exhibits 58 through 63 are received into evidence.)

THE COURT: And then there was an objection to the Mark Patrick declaration for the same thing, not for the truth of the matter asserted.

MR. MORRIS: Exactly.

THE COURT: But you agree as long as it's --

MR. MORRIS: Correct.

THE COURT: Okay. So what that means is, to recap, 53 through 75 are admitted, although some of those are only -- they're not for the truth of the matter asserted. And then 77 through 80 are admitted. Okay?

MR. MCCLEARY: And 76? We offered 76.

THE COURT: That's -- we carried it. We carried it. It relates to the expert.

MR. MCCLEARY: Carried it.

(Pause.)

MR. MCCLEARY: Thank you, Your Honor.

THE COURT: Okay. Now let's straighten out Highland's exhibits. So, I'm showing 1 through 16 have been admitted, and then 25 through 31-A?

MR. MORRIS: 25 through 31-A?

THE COURT: I'm sorry. Yes. 25 through 31-A.

MR. MORRIS: Okay.

THE COURT: And then 34. And then 39, 40, 41, and

then 45. 51, 59, and 60.

MR. MORRIS: Okay. So I'm going to do my best not to burden the Court. I'm trying to focus. We move for the admission into evidence of Exhibit 32, which is Mr. Dondero's objection to the HarbourVest settlement. And the reason that we're offering it is because he made no mention of any concern at all that the settlement implicated material nonpublic inside information.

THE COURT: All right. Any objection?

MR. MCCLEARY: 32?

THE COURT: Uh-huh.

MR. MCCLEARY: Yes, Your Honor. Relevance and hearsay.

THE COURT: Overruled. And I can take judicial notice of it in any event.

(Debtors' Exhibit 32 is received into evidence.)

MR. MORRIS: We move for the admission into evidence of Exhibit 33, which is the recent letter from the Texas State Securities Board declining to take any action after conducting an investigation of the Dugaboy complaint.

THE COURT: Okay. Any objection?

MR. MCCLEARY: We object on the grounds of relevance, 403, hearsay, and authenticity, Your Honor.

And I also, I think it's important that the decision by a regulatory body has no bearing on this cause of action or the

colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry, Your Honor.

THE COURT: Okay. I overrule the relevance objection. Certainly, it goes to colorability. It's some evidence. It's some evidence. A regulatory body did not choose to go forward --

MR. MCCLEARY: But that could be for --

THE COURT: -- on the complaint.

MR. MCCLEARY: That could be for reasons entirely unrelated.

THE COURT: True, true. It's some evidence.

MR. MORRIS: That's speculation.

MR. MCCLEARY: Not for this.

THE COURT: But what is the authenticity objection?

MR. MCCLEARY: Well, there's no demonstration. I don't believe they sponsored that with anyone.

THE COURT: Pardon? Say again?

MR. MCCLEARY: They didn't sponsor that with anyone.

MR. MORRIS: Your Honor, I actually -- if they really put me to it, because I was reading the Rules of Evidence in the wee hours of the morning, I am certain that there's an exception for government documents and government statements and government decisions.

MR. STANCIL: Your Honor, as to its authenticity, I

could produce a witness from Highland who said they got it, if that's really what we're doing. That it's the letter, they got it from the TSSB, if we're really doing authenticity.

MR. MCENTIRE: Well, first of all, it's hearsay and there is no authenticity issue and it's irrelevant. I understand --

MR. STANCIL: What is the authenticity issue, Mr. McEntire?

THE COURT: I'm trying to understand the authenticity issue. You think this is a --

MR. STANCIL: Do you think it's a real letter or a fake letter?

MR. MCENTIRE: Well, first of all, I'm going to address the Court and not you, okay?

Your Honor, --

THE COURT: Well, address by speaking in a --

MR. MCENTIRE: Yeah. Thank you.

THE COURT: Okay. I'm just saving the court reporter from grief, okay?

MR. MCENTIRE: It is hearsay, and it is hearsay that is calculated to be misrepresented or mischaracterized because it's utter speculation as to the basis for their decision. And if it's -- utter speculation is the basis of your decision, it has no reason to come in. There's no --

THE COURT: What you're telling me, it goes to the

weight of the evidence. Okay?

MR. MCENTIRE: Your Honor, --

THE COURT: Okay. You're not telling me it's inadmissible hearsay.

MR. MCENTIRE: Well, it is inadmissible hearsay.

MR. MORRIS: Can I just, for one second?

THE COURT: Please.

MR. MORRIS: Paragraph 34 of their motion, Your Honor. Quote, "The Court also should be aware that the Texas State Securities Board opened an investigation into the subject matter of the insider tradings at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached adversary proceeding are plausible and certainly far more than merely colorable."

They used the investigation to try to convince you that their claims are colorable, and now we have a letter saying there's nothing.

THE COURT: Okay. You want to explain that to me?

MR. MCENTIRE: Well, we put no evidence in, in this proceeding --

THE COURT: You put what?

MR. MCENTIRE: We have put no evidence in, in this proceeding, --

THE COURT: You filed a pleading under Rule 11

suggesting this was highly relevant, right?

MR. MCENTIRE: We filed a motion. Yes, we did.

THE COURT: Under Rule 11.

MR. MCENTIRE: Yes. Of course we did.

THE COURT: Okay.

MR. MCENTIRE: Of course we did.

THE COURT: Suggesting this Texas State Securities Board complaint and investigation was highly relevant.

MR. MCENTIRE: The fact that it had opened an investigation and was conducting an investigation is irrelevant. Its decision to stop the investigation without further elaboration or clarification, this is why it calls for utter speculation.

MR. MORRIS: Your --

THE COURT: Okay. Do you have the hearsay exception that applies? I'm looking at my evidence rules right now for the government record or public record. Is it 803(8) that we need to have addressed here?

MR. STANCIL: 803(8), Your Honor.

A VOICE: Yeah, public records.

THE COURT: Okay.

MR. STANCIL: Public record. Sets out --

THE COURT: Public records, 803(8), hearsay exception. Moreover, you pled allegations suggesting this investigation was really relevant. So I overrule your

objection, and so that means 33 is admitted.

(Debtors' Exhibit 33 is received into evidence.)

MR. MORRIS: Thank you, Your Honor. I continue. Exhibit 36 --

MR. MCENTIRE: Which one was that?

MR. MORRIS: That was 33.

So now we're up to 36, Your Honor. I'm going to skip some of these.

THE COURT: Okay.

MR. MORRIS: But this is just the Court's order approving Mr. Seery's original --

THE COURT: I'm waiting for any objection for the record. Do we have an objection, Mr. McCleary?

MR. MCCLEARY: 36, relevance, Your Honor.

MR. MORRIS: The relevance is that this Court approved without objection Mr. Seery's compensation package in an amount that included a base salary of $150,000, which the Claimant Purchasers and the independent director saw fit to continue.

THE COURT: Objection overruled. It's admitted.

(Debtors' Exhibit 36 is received into evidence.)

MR. MORRIS: I think 38 may be on their list. Yeah, 38 is in as their 26, right? So that should be admitted.

THE COURT: Admitted.

(Debtors' Exhibit 38 is received into evidence.)

MR. MCCLEARY: If it's on our list, we agree.

THE COURT: Okay. It's admitted.

MR. MORRIS: That's it, Your Honor.

THE COURT: Okay. Do you all need a five-minute break before we do closing arguments?

MR. MORRIS: I'd be grateful.

THE COURT: Okay.

MR. MCCLEARY: Yes, Your Honor. Thank you.

THE COURT: Will do.

THE CLERK: All rise

(A recess ensued from 5:49 p.m. to 5:57 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated.

We're back on the record in the Highland matter. Closing arguments. Just for everyone's benefit, time -- you said 47 minutes and 23 minutes back several minutes ago, and then we had all the housekeeping stuff. So I'm not sure if that's where we are right now or if --

MR. MCENTIRE: I'm waiting for my monitor guy to be here.

THE COURT: Okay. Okay.

So Caroline, is it still 47 and 23?

THE CLERK: Yes.

THE COURT: That's when we started the housekeeping stuff.

MR. MCENTIRE: So 27 minutes?

THE COURT: Twenty-three.

THE CLERK: Twenty-three.

MR. MCENTIRE: Twenty-three? Can I get a five-minute warning, please? Would you pull up the PowerPoint? And let's go to Slide 39.

May I proceed, Your Honor?

THE COURT: You may.

CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: So, before I go to the PowerPoint, I'd like to kind of give a high-altitude overview of the situation as I see it from the evidence perspective. We don't believe this should have been an evidentiary hearing. Evidence has been allowed.

We had a situation where, if you believe Mr. Dondero's testimony as contrasted with Mr. Seery's testimony, you have a credibility issue. So the Court is now conducting an inquiry presumably on the basis in part on the credibility of witnesses. And if you engage -- and if you want to indulge that type of inquiry, the credibility of witnesses, without allowing the Plaintiff in this case or the Movant in this case to conduct some level of meaningful discovery, I would suggest we have been deprived of due process, because without documents to test Mr. Seery's statements, we are being deprived of something that's basically very fundamental in our

judicial process.

And therefore, it underscores our argument and our rationale why this shouldn't be an evidentiary hearing, because I don't believe the Court can consider credibility issues.

We have, on the one hand, unequivocal notes from Mr. Dondero prepared contemporaneously that would suggest that someone admitted to him and stated to him that they did in fact obtain material nonpublic information. Mr. Seery says that didn't happen. I specifically said, is that a lie? Yes, it's not true. Well, that's a real problem, because that's not the criteria that this Court should use for determining whether we have a colorable claim. A colorable claim is whether there is some possibility. It's something less, even less stringent than a 12(b)(6) standard, plausibility. We have that.

If you look at our pleadings, we have set forth all of the facts we need, all the elements we need to establish a trade on material inside information, nonpublic information. We have evidence -- we have allegations that there was no due diligence. And Farallon's lawyer stood up here -- well, I'm not going to really address that today. But if there was any day to address it, it was today. We have no evidence to suggest they did do due diligence. Even Mr. Seery said, I don't know what due diligence they did. We have evidence to

suggest that the only due diligence they did was to talk to Mr. Seery, who has told -- who told them that this is very valuable, don't -- this is a really good -- a good investment here, it's a lot better than the 71 percent that's on our disclosures.

And Judge, that evidence supports the colorability of the claim. And if you go down the pathway of saying, well, I'm not sure about Mr. Dondero because he had been held in contempt two years ago, that's a real problem. That's a problem for this Court. And I'm going to suggest that's why this should have been a four-corners deliberation. Even Farallon and Stonehill suggest this should be a four-corners deliberation.

We have evidence now of no due diligence. We have evidence before you that suggests that they did learn about MGM before the announcement date. We have evidence that Mr. Seery did trade on -- did -- was aware and received information of material nonpublic information. And for him, a CEO of his reputed stature, to sit here and say that was not material and that was nonpublic defies common sense. It defies reasonableness. That goes to credibility.

Mr. Dondero's notes speak volumes. The trades themselves speak volumes. Mr. Dondero established that the interest -- return of interest here is to be less than one -- it's in the one digits, and hedge funds trade in the 30, 40, 50 percent

range. Well, if that's the case, we have Farallon walking away from a return on the exit financing of 13 percent, and that wasn't good enough for him. How could six percent be good enough for him? There's something missing here. There's something not right.

And we're entitled to get our lawsuit on file and do some discovery. And if they want to do a 12(b)(6), they do a 12(b)(6). If they want to do a Rule 56 after discovery, they could do a Rule 56, all in this Court. But to address this threshold issue now based upon this, what happened here today, is a fundamental denial of due process.

I'd like to go to my pleadings.

Can you go to Slide 39, please?

First of all, let there be no doubt -- 39. Slide 39. 38. 38, please.

We can plead on information and belief. We have a right to plead on information and belief. And the Fifth Circuit -- that is an acknowledged procedural practice in the Fifth Circuit. And if some of our allegations are based upon information and belief, so be it. The test here is not at this stage. The test here is whether I have sufficient factual allegations, whether on information and belief or otherwise, to satisfy at most a plausibility standard. That's it.

And if they want to challenge us at a later date, they

can. Rule 56. 12(b)(6). Or standing. But we have standing. We have standing. We have standing under Delaware law. We're a contingent beneficial interest that has standing under Delaware law and all other law. All -- even Texas agrees that a contingent interest has standing, an inchoate interest as Mr. Seery described. A property interest. You have property interest, you have standing.

THE COURT: Let me ask you.

And Caroline, turn the clock off when the Court interrupts.

Just so you know, I mean, my analysis here is standing first. Does your client have standing? Because we all know that's a subject matter jurisdiction inquiry and I have to explore that first. And then I've said many times the legal standard question for colorability. That's kind of the second place I go --

MR. MCENTIRE: Sure.

THE COURT: -- if I find there's standing. But can you tell me, have there been appellate decisions that are relevant today on standing? Contrary to what people may expect, I don't follow every appellate decision from every appeal in the Highland case. Okay? I wait until I get a mandate --

MR. MCENTIRE: Sure.

THE COURT: -- to where I have to act on something.

MR. MCENTIRE: Sure.

THE COURT: So I feel like I've learned at some point that some either district judge or Fifth Circuit said some party didn't have standing. And I don't know if it was Hunter Mountain or some other trust.

MR. MCENTIRE: Not --

THE COURT: And is there anything they said that, if it wasn't Hunter Mountain, could be relevant here?

MR. MCENTIRE: I hope somebody kicks me if I'm wrong, what I'm about to say. I'm not aware of any such issue --

THE COURT: Okay.

MR. MCENTIRE: -- dealing with Hunter Mountain Investment Trust. I am not.

THE COURT: But any other party that might somehow bear on this case?

MR. MORRIS: I apologize, Your Honor, I was distracted. For which issue?

THE COURT: Standing. Because I was saying my first thing I've got to tackle in ruling on this is standing of Hunter Mountain. And I seem to remember learning that either the district court on an appeal or the Fifth Circuit on some appeal from Highland --

MR. MORRIS: Correct.

THE COURT: -- said some party didn't have standing.

MR. MORRIS: Correct.

THE COURT: And I don't know if it was --

MR. MORRIS: Dugaboy on the 2015.3, for sure, was a Fifth Circuit standing decision.

THE COURT: Okay.

MR. MORRIS: I think there was a district court order that preceded that.

THE COURT: Okay.

MR. MORRIS: That was the subject of the appeal.

THE COURT: The Dugaboy --

MR. MORRIS: 2015.3.

THE COURT: -- motion to require those --

MR. MORRIS: Yeah.

THE COURT: -- 2015.3 statements. Okay.

MR. MCENTIRE: So what we have here -- we can go back on the clock if you'd like.

THE COURT: Yes, please.

MR. MCENTIRE: How much time do I have?

THE CLERK: You have just under 16 minutes.

MR. MCENTIRE: Sixteen? Okay. Give me a two-minute warning. Sorry.

Your Honor, what we have here --

THE COURT: I don't think the U.S. Supreme Court justices will give you a two-minute warning, but maybe I'm wrong.

MR. MCENTIRE: Would you give me a two-minute

warning, please?

THE COURT: And I'm sure not a Supreme Court justice.

MR. MCENTIRE: What we have here is we have a 99.5 percent equity interest that has now been relegated to a category of contingent interest, which we don't believe we should be, and that's part of our declaratory judgment relief we're asking for, which we have standing to do that at a minimum because we want to be treated like a Class 9.

If they want to treat us like a Class 10, I have an argument for that, and it's more than colorable. It's persuasive. It's -- it is a winning argument. And that is we do have standing in our individual capacity, and we have given you a whole bunch of cases in our PowerPoint, or we will give you a whole bunch of cases in our PowerPoint and in our briefing to support that.

We also have given you Delaware case law that says we have standing under Delaware trust law to bring a derivative action against the Trustee. We have done everything appropriate here.

We have the -- a demand upon Seery obviously would be futile to prosecute the claim. A demand upon the Oversight Board would be futile to make a demand on Muck and Jessup, because they're Defendants and they're SPEs of Farallon and Stonehill. And a demand upon Mr. Kirschner would be futile. They suggest that there's an assignment of some sort, but that

would be a modification -- of the claims over to the Litigation Trust, but that would be a modification of the plan.

There's been no assignment of this claim, or these claims, to the Litigation Trust Trustee. But even if there had been, we pled that in the alternative as well. And it would be futile to make a demand on Mr. Kirschner because he's suing Hunter Mountain.

So we are an appropriate party. The only, then, issue becomes whether or not we have standing under Delaware law to bring a derivative action. And we have briefed that and we -- and that's included in our PowerPoint. The answer is yes.

I'd like to go briefly to Page -- next slide.

In our factual section, we set forth why this investment would defy any kind of rational economic sense in the absence of material nonpublic information as a factual allegation supported by data, supported by dates, supported by time.

Based upon that, we also have allegations that are framed around the admissions that Mr. Michael Linn provided. We have allegations that he turned down a 30 or 40 percent premium in our petition. We have allegations that they admitted that they did no due diligence. We have allegations that they admitted that they got material -- basically information about MGM.

And again, it's not all about MGM. It's about the values

of all the portfolio companies. They want to make it about MGM. If they do, we win. But it's much broader than that.

And we have standing to bring this claim because if we're right Mr. Seery will have to return excess compensation and the Claims Purchasers will have to disgorge. And that's going to help not just Hunter Mountain. That's going to help other creditors who haven't been paid yet.

So this is not exclusively -- Hunter Mountain would substantially benefit. I'm not suggesting otherwise. But it also benefits innocent stakeholders other than Hunter Mountain. And that's why we are an appropriate party. We don't have a conflict of interest to bring this. Everybody on their side of the table does. There's no one else who could bring this.

Your Honor, it's very clear when the trades took place. We give dates and times. It's very clear that -- next slide, 40. It's very clear that their investment was over $160 million. If it isn't, I don't see any denials. All we got today was a lame statement from the lawyer saying we're not here today to deny this.

MR. MORRIS: I'm offended.

THE COURT: He's offended by being called lame.

MR. MCENTIRE: Not you lame personally.

MR. MORRIS: Oh, thanks for the clarification.

THE COURT: Okay.

MR. MCENTIRE: A lame statement by you. In fact, it wasn't even you, so --

In any event, Your Honor, --

MR. MORRIS: I've been called worse.

MR. MCENTIRE: -- the point being is that there was no -- there's not -- never been an attempt to deny the factual allegations in our pleadings dealing with Farallon and Stonehill. None at all.

And so -- not that that's ultimately relevant, because that's an evidentiary issue outside of the four corners of our pleading, but it does -- it just stands out and screams. It screams. And it screams volumes.

So right, now based upon our pleadings -- we even plead in Paragraph 42, Paragraph 42, exactly what they invested. This is what you have before you. No one has disputed it. It's in the four corners of our pleading. We've got dates, times, amounts. We have admissions to Mr. -- well, we have admissions from Michael Linn, Paragraph 47. We have -- we do plead upon information and belief the *quid pro quo* on compensation. And frankly, the evidence here today is that the compensation is excessive. And the experts will further confirm that it is excessive. $1.8 million with a bonus program in place to pay him another $8, $9, $10 million, when in fact the risks don't exist and there's no uncertainty and therefore the percentages make no sense. That's --

THE COURT: What do you mean, the risks don't exist and there is no uncertainty?

MR. MCENTIRE: If Mr. Seery is telling Farallon and Stonehill don't sell, this could be really valuable, it's inconsistent with the notion that the schedule and the performance -- performance schedule in the compensation agreement is rationally justified. Because if it's really certain or it's likely you're going to make a lot of money, there's no reason to give him six percent to incentivize him because it's already a done deal.

And the whole point here is that I scratch your back, you scratch mine. They make a lot of money on their deal and he gets a lot of money on the backside post-effective date. Post-effective date.

Next slide, 49.

It would have been impossible, based upon the publicly-available information in Paragraph 49, impossible for Stonehill and Farallon, in the absence of inside information, to forecast any significant profit when they made their investments. It's not possible. Because given the amount of the Claim 8 and Claim 9 claims -- they actually invested in Claim 9 with a zero return. It's projected to be a negative result. On Claim 8, even if you allocate their entire purchase price to Claim 8, they're going to get something less than a 10 percent return paid out over a couple years. Nobody

invests that kind of money in an unsecured creditor asset that hasn't been collateralized. There's something wrong here.

And we have a right to have our day in court to show that. We have our right to take a true deposition of Mr. Seery with documents. We have a right to take Farallon and Stonehill's deposition with documents. And we have tried to get information and we have been turned down at every turn. We have a right to have our day in court, Your Honor.

We have allegations of excessive compensation. I know Mr. Morris suggested the other day that we didn't have any such allegations. They're here. The whole idea here is that Mr. Seery would really profit on the backside. And, you know, he actually testified, I believe -- I won't do that because that's outside the four corners of our pleading. But the -- there is a *quid pro quo*. We allege there's a *quid pro quo* upon information and belief. And we also allege willfully and knowingly, we allege conduct that falls clearly within the exceptions.

None of this -- none of these claims were released. Mr. Seery's not an exculpated party in the context of how we -- proposing to sue him here. None of the protected parties, to the extent that Muck and Jessup claim to be protected parties, they're not protected here, because all of the claims we're making are on the basis of willful misconduct and bad faith, which are the standards that they used and incorporated in the

plan and in the gatekeeper provisions.

How much time do I have?

THE CLERK: Right now you have --

MR. MCENTIRE: Thirty seconds?

THE CLERK: -- seven minutes left.

MR. MCENTIRE: Okay. Next slide, please.

Mr. Seery has admitted that he has a duty to avoid self-dealing. We allege that he did self-deal. There is clearly a relationship. We have a right to explore the depths of that relationship. Well, already we know there is a relationship. We have investments in charities, contributions to charities, meet-and-greets, congratulatory emails. It's not as if Farallon and Stonehill are strangers, or Mr. Seery's a stranger to them. It's not like that at all. They contacted him to get involved.

And by placing -- by acquiring these claims -- and by the way, this is the most significant trading activity in your bankruptcy, in this bankruptcy proceeding. Post-confirmation. Post-confirmation. By acquiring these claims, they were guaranteed to be put onto the Oversight Board. By acquiring these claims, they were guaranteed to be put in a position -- into a position where they would adjust, monitor, compensate Mr. Seery. That's the terms of the Claimant Trust. Those are the terms.

And it's interesting, because one of the amendments that's

in evidence to the plan, I think it's either the third or the fourth amendment, that came out of nowhere right before confirmation, they changed the structure of the Claimant Trust to go off a standard base pay and added in a bonus structure at the last minute. That's evidence.

Mr. Seery has acknowledged, we have alleged he had duties to avoid self-dealing, to always look out for the best interests of the estate, to avoid conflicts of interest. Well, here, to the extent that there is a *quid pro quo*, he is self-dealing and he has injured the Reorganized Debtor and he's injured the Claimant Trust, because that's just less money.

And we also allege, Your Honor, it's also an allegation that --

THE COURT: And let me ask, the sole injury here is compensation was more than it would have been if not for the sale of the claims to Farallon and Stonehill --

MR. MCENTIRE: That's one of the injuries.

THE COURT: -- and therefore less money at the end of the day for creditors and ultimately Hunter Mountain?

MR. MCENTIRE: Yes. And we also allege that, as part of this arrangement, conspiracy, as we allege conspiracy, we have seen over $200 million flow out of the coffers of this estate in the form of --

THE COURT: What do you mean, as a result of the

alleged conspiracy? What do you mean?

MR. MCENTIRE: A delay, a postponement, making long-term payouts, keeping the litigation alive. They actually suggested to Mr. Linn, don't settle these claims, don't sell out, because this is asset-backed, and we also have claims. And so --

THE COURT: Wait, what? Say again?

MR. MCENTIRE: One of the things that Mr. Linn told Mr. Dondero, according to Mr. Dondero's notes, is we have -- this is very valuable, we're buying assets and we're buying into claims, the litigation claims that are being asserted in this bankruptcy proceeding.

THE COURT: Yes. Got it.

MR. MCENTIRE: Yeah. And so the whole idea here is, is that people are funneling money in and taking money out of the coffers of this estate to fuel future litigation in order to have a bigger payday at the end for Class 8 and Class 9. That's exactly what those notes suggest.

THE COURT: I don't understand the correlation. What correlation are you making? Because of the claims being purchased, what?

MR. MCENTIRE: The claims being purchased allow Muck and Jessup to be in a position to award compensation. We've talked about that.

THE COURT: I got that.

MR. MCENTIRE: That's one type of injury. The other injury is, and we have alleged it, is the fact that these claims become very valuable not only because they're asset-backed but because also the litigation claims that Mr. Kirschner is prosecuting.

THE COURT: But how does the purchase of the claims impact that? They were allowed claims at certain amounts before, and after the purchase they're still allowed claims.

MR. MCENTIRE: Mr. Seery is telling them that, basically, this is our plan, this is what we're doing, this is --

THE COURT: That was the plan of reorganization that was confirmed by the Court. I don't get how something changed. I'm trying to get to what are the injuries that your client has suffered. And I get the compensation argument you're making, but I don't get the rest of it.

MR. MCENTIRE: If Mr. Dondero had been in a position, or one of his entities had been in a position, or even Hunter Mountain, and I'm not sure why Hunter Mountain -- be in a position to have acquired the claims, then we would -- this bankruptcy wouldn't even be in existence anymore. It'd be over. All creditors would be paid. It would be done. Be over. And that is an allegation we have made --

THE COURT: How do I know that?

MR. MCENTIRE: Because all the creditors would have

been paid off.

THE COURT: How do I know, if he would have purchased the claims, that's what would have happened?

MR. MCENTIRE: Well, that's what he testified to today here. I don't want to get off on a rabbit trail.

THE COURT: I'm trying to understand the injury, --

MR. MCENTIRE: Sure. I understand.

THE COURT: -- because that's part of my analysis here.

MR. MCENTIRE: The focus, the focus is on the compensation. And once they aid and abet, once they aid and abet a breach of fiduciary duties, they are subject to disgorgement, and disgorgement of all of their ill-gotten gains. And the ill-gotten gains are now well over -- approaching over $100,000 million.

THE COURT: How do you get to that number?

MR. MCENTIRE: Easily. We know how much they purchased, which has never been denied. We know how much has been distributed to Class 8. And we know what percentage of Class 8 they own. They own about 95 percent of all Class 8 claims. So if $270,000 million has been distributed to Class 8, they got 90 percent of that, 95 percent of it has already gone to them, Farallon and Stonehill.

THE COURT: But it would have gone to the sellers of the claims as well. I'm trying to make the connection.

MR. MCENTIRE: That's not the injury. The injury is what -- that is a consequence of their conduct. The injury is the compensation. All right? That's a distinct injury. They are subject to disgorgement as a consequence because they have done wrong, and the law should not tolerate -- should not tolerate and allow wrongdoers to get away. And that's where the unjust enrichment and disgorge --

THE COURT: And what are your best cases for that, that they would have to disgorge --

MR. MCENTIRE: We have cited --

THE COURT: -- the Purchasers would have to disgorge --

MR. MCENTIRE: We have cited cases in our brief.

THE COURT: I'm asking you now to --

MR. MCENTIRE: I don't have them in front of me right this second. But an aider and abettor --

THE COURT: The *CVC* case, is that your best case?

MR. MCENTIRE: I don't have the cases in front of me. I can say this, that the case law is robust, and I can supply you --

THE COURT: It is not robust. That's why I'm asking you to zero in. I read your *CVC* case from the Third Circuit, and I'm wondering, is that your strongest case?

MR. MCENTIRE: No. I think we -- I think we have a lot of strong cases. I'm not sure that it is the strongest.

THE COURT: Tell me which ones, so I --

MR. MCENTIRE: Ma'am, I just said I don't have it in front of me. If you'll look --

THE COURT: Okay. Well, this is closing argument where you present law in support of your position.

MR. MCENTIRE: Well, actually, I'm arguing facts right now. But Your Honor, what I want to tell you is if you'd like me to submit a letter brief on that, I will.

THE COURT: No.

MR. MCENTIRE: Okay. Then I won't. It's in my brief. All of our authorities are in the brief.

In conclusion, --

THE COURT: Okay. So that was the *CVC* case from the Third Circuit which dealt with an insider who purchased claims, statutory insider, a board member, a 28-percent equity owner, who purchased claims during the case to be in a position to file a competing plan and didn't disclose to the board or file a 3001(e) notice. Okay. There was -- claims shouldn't be allowed at more than what the purchaser paid for it.

MR. MCENTIRE: Okay.

THE COURT: Okay. I'm asking you, is that your best case? Because you also cited *Adelphia*, which seemed kind of factually off the mark. And so I really --

MR. MCENTIRE: I -- I'm sorry, --

THE COURT: I need to know, because I've made clear from the beginning, --

MR. MCENTIRE: Yes.

THE COURT: -- I'm struggling with how is there a cause of action related to claims trading.

MR. MCENTIRE: (chuckles)

THE COURT: I don't know why you're giggling. This is --

MR. MCENTIRE: No, I'm not. But --

THE COURT: -- serious stuff. Okay?

MR. MCENTIRE: Agreed. Agreed.

THE COURT: A bankruptcy estate is being charged ka-ching, ka-ching -- not bankruptcy estate -- the post-confirmation trust. Ka-ching, ka-ching, ka-ching. So this is serious stuff.

MR. MCENTIRE: Agreed.

THE COURT: I need to, you know, colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Even if plausibility is the standard, which I've expressed my doubt about that, how do you have a plausible claim? What is your best case?

MR. MCENTIRE: Okay. This --

THE COURT: Just to recap what I'm focused on,

purchaser and seller, okay? I can see where breach of contract, maybe some sort of torts between those two. Okay. I can see where the U.S. Trustee, the SEC, I don't know, the Texas State Securities Board, they might get concerned about allegations of insider trading and there might be a regulatory action. But the estate? Again, the post-confirmation trust --

MR. MCENTIRE: Okay.

THE COURT: -- and a contingent beneficiary. I'm trying to understand what is the best legal authority that might support a colorable claim. And we talked about the *CVC* case and *Adelphia*. I'm trying to figure out what are other cases you think I should really hone in on to understand this.

MR. MCENTIRE: All right. At the very beginning this morning, during my opening statement, I had said this is not your typical claims-handling case, because I recall from our last conference you asked that question a couple of times. This is not your typical claims-handling case. And it's not a typical claims-handling case because we have a fiduciary that we claim breached his duties that were owed to the estate. And he self-dealt. And he -- this has nothing to do with the plan. This has something to do with what Mr. Seery did outside the corners of the plan. Perhaps he used the plan expediently. He self-dealt.

That's why this is not just between a seller and a buyer

of a claim. That's number one.

We have been denied an opportunity to discover the communications between the sellers and the buyers, and my guess is we have big boy agreements that prevent the sellers from ever coming back at anybody for fraud. My expectation, that's the case. We should have a right to go explore that. So that's why they're not here.

THE COURT: Why? I mean, what would that tell you? What would that tell you?

MR. MCENTIRE: That --

THE COURT: If there's a big boy agreement, if there's not, what --

MR. MCENTIRE: It would tell us --

THE COURT: -- consequence would that have for this --

MR. MCENTIRE: It would tell us --

THE COURT: -- proposed lawsuit?

MR. MCENTIRE: It would answer Mr. Morris's question that he's raised several times, this is the seller's issue, this is not -- this is not the Hunter Mountain's issue. It is Hunter Mountain's issue. Hunter Mountain as an equity interest-holder should be in a position to be certified as a Class 9 beneficiary now pursuant to our declaratory judgment action. That's number one.

Number two. As a contingent beneficiary, it is entitled

to protect its interests and bring suits if it sees that something has happened that is incorrect and is a tort involving the Reorganized Debtor and the Claimant Trust. That is the nature and the essence of our claim.

And as a consequence, the aiders and abettors should not be allowed to walk away unharmed. They should be required to disgorge their ill-gotten profits. And that calculation is easily done, as I've just demonstrated.

Your Honor, that's all I have. Thank you very much.

THE COURT: Thank you.

MR. MCENTIRE: And we talked -- we'd need an opportunity to argue on the issue of experts, because -- whether you're just going to take it under advisement, I'm not sure how you're going to handle that.

THE COURT: I'm going to read the pleadings and then I'm going to let you all know are we coming back for another day.

MR. MCENTIRE: Thank you.

THE COURT: All right. Who is making the closing argument -- do we have three closing arguments?

MR. STANCIL: Yes.

MR. MCILWAIN: We're going to do it in reverse order.

MR. MORRIS: Reverse order in.

THE COURT: Okay. Reverse order of --

MR. STANCIL: Keep it interesting.

MR. MORRIS: I think I was last on the opening.

THE COURT: -- importance?

(Laughter.)

THE COURT: No. Just kidding. Just kidding.

MR. MORRIS: We're assuming you remember what the original order was.

MR. STANCIL: Yeah, right, right.

MR. MORRIS: It was so many hours ago.

THE COURT: Okay. Oh, so many hours ago.

MR. MCILWAIN: I think I was referred to earlier as the lame lawyer.

THE COURT: Oh, you were. I think --

MR. MCILWAIN: So I'll start. I think --

THE COURT: I think you --

MR. MCILWAIN: Or maybe it was the lame argument, whatever. Whatever.

THE COURT: I think you were the lame one.

CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Your Honor, Brent McIlwain here for the Claim Purchasers.

Let me start, I guess, by saying I understand now why Hunter Mountain did not want to put on evidence, because the evidence that they put on, frankly, made their case much worse.

As we argued or we stated in the opening statement, our

position is that you can look within the four corners of this document and determine that there is no plausible or colorable claim. What the evidence showed is that Mr. Dondero allegedly had a call with one -- with Farallon, not with Stonehill, with Farallon, Farallon wouldn't tell him what they paid, Farallon did not accept an offer of 130 or 140 percent of whatever they paid for the claim, and he thinks they did no due diligence, right? He had nothing in his notes about MGM. So he can say that he thought that they were positive because of MGM, but it's certainly not -- I don't think the Court should take that evidence with any credibility.

But interestingly, what Mr. Dondero says is, well, how do you know how much they paid for these claims? He goes, well, there was a market for the claims, right? They were all trading at 50 or 60 cents. But yet no one would ever buy these claims without any due diligence because the projections in the plan indicate that they wouldn't -- they wouldn't get a return.

Well, if there's a market for the claims and he's willing to pay 30 or 40 percent more than whatever someone purchased, certainly there is a market for the claims. And he is the only one, frankly, that had inside information. That's why he was willing to maybe pay more.

Or, alternatively, the case that you were describing before, Mr. Dondero maybe wanted to buy the claims so he could

control the case, right, so he could dismiss any litigation that was pending against himself so he could avoid the ire of the estate that is aimed at him.

It also -- the Court's inquiry as to what the injury is I think is precisely on point. The only injury offered at this point really is that somehow my client's agreed-to higher compensation that is reasonable or appropriate in return for some inside information on claims that were allegedly trading at 50 or 60 cents in any instance. And what the evidence showed is that, one, Mr. Dondero never had any information about that, about the compensation that Seery is receiving when this complaint was filed, when this motion for leave was filed.

And so if you judge the complaint within the four corners, there is no -- there is no *quid pro quo*, right? Because he says, well, there's obviously something up here because they wouldn't have bought these claims without due diligence, and they must have agreed to higher compensation, and that's why it all happened. And if we throw all this out here, then we'll get to do the discovery that we wanted to do.

Importantly, if you look at his notes, right, the first thing that's written down is discovery to follow, because that's how he operates. That's how a serial litigator operates. Discovery to follow so that I can pay you back for not selling your claim to me. Right? So I can't control the

world, so I can't control this case, you're going to pay. And we're all paying. Every one of us here. Right? There's 15 lawyers in the courtroom and probably 10 on the phone, right? We're all paying.

And so when Mr. McEntire says I'm not getting my day in court, we've had an entire day in court. We've had three hearings to decide what this hearing is going to be. And he's gotten more than his day in court for, frankly, what is word salad. This complaint doesn't pass any test, whether it's 12(b)(6) or under the *Barton* Doctrine. It's simply allegations that are thrown out there, and they're saying, so that we can do more discovery to determine if we actually have allegations. Because they want to continue to harass people, they want to continue to be a thorn in everyone's side, so that perhaps they can avoid further litigation against Mr. Dondero or they can convince somebody to settle with Mr. Dondero.

It doesn't make any sense, Your Honor, and this is exactly why there is a gatekeeper provision, right. That's why the Court imposed this.

And you ask yourself, why would someone sell these claims? Obviously, the sellers of the claims have not shown up. Whether they're big boy, it doesn't matter, because the Court and this estate had nothing to do with those sales. But they haven't shown back up. I can -- I can venture a guess why, if

I was involved with Mr. Dondero, I would sell my claim, right? Because I wouldn't have to be here. And that's exactly why the Court should not authorize this complaint to be filed and the gatekeeper provision of the order should prevent it. And frankly, this should be shut down and we should not have to have continued litigation over experts, or anything else, for that matter. And frankly, we should just be able to go on and let Mr. Seery do his job.

Because I think the evidence was pretty clear that his compensation is reasonable and it was in line, frankly, with what he was making before. And candidly -- and maybe it's because Mr. McEntire is not involved in bankruptcy cases, but this is similar compensation that I see in numerous cases, and it's tiered to incentivize Mr. Seery to do his job, and he's doing his job.

So, with that, Your Honor, I'll cede the rest of the time to the other parties.

THE COURT: Okay. Thank you.

CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. I'm going to focus -- and I'm going to put my little clock up so Mr. Morris doesn't, you know, give me the hook here.

THE COURT: Okay.

MR. STANCIL: But first --

THE COURT: Next time we're all here, maybe I'll have

one of those red, what do you call them, the buzzer.

MR. STANCIL: Oh, the big light?

THE COURT: The red light.

MR. STANCIL: We used to joke that the judge I clerked for wished he had a trapdoor and he could just pull the lever when it was done.

THE COURT: Okay.

(Laughter.)

MR. STANCIL: Maybe I shouldn't have put that in your head.

THE COURT: Who was that? Are we going to say who that was?

MR. STANCIL: So Your Honor, I'm going to try to set the legal framework. I'm going to ask you -- and I think we have our -- we have the deck. It's the little -- if we could put that up and start on Slide 2.

I'd like to address what standard applies, and then I'd like to spend a few minutes asking Your Honor again not only to rule on multiple alternative grounds, but also I'd like to walk through what if you did this on a pure 12(b)(6), because it's going to collapse.

So, well, we'll just jump in. I said at the beginning that we know that the question here is not what does the word colorable mean in isolation. We wouldn't do that in any context. We would always look and see what the operative

language here is in the Court's confirmation order. So the question is, what did the Court mean, it must represent a colorable claim?

So we mentioned before Paragraph 80 of the confirmation order. That cites *Barton*. It cites the vexatious litigant cases. I've not heard one word from Mr. McEntire answering how it can be that we're here on a sub-12(b)(6) standard he now says when the Court articulated this legal authority and this legal basis in the confirmation order. If he believed that, the time to make that argument was on the confirmation appeal, and that's over.

But let me then say, how did we get, how did the Court get to Paragraph 80? Well, that came after a series of factual findings in the confirmation order -- in fact, actually, Josh, do you have the hard copy of this?

MR. LEVY: Yeah.

MR. STANCIL: If I could hand that to the Court.

May I approach, Your Honor?

THE COURT: You may. Thanks.

MR. STANCIL: And I don't propose to go through every slide, Your Honor.

THE COURT: Okay.

MR. STANCIL: But if you could turn to Slide #5. This is Paragraph 77 of the Court's confirmation order. Factual support for gatekeeper provision.

MR. MCENTIRE: Excuse me. May I have a copy? I can't see it.

THE COURT: Oh.

MR. LEVY: Oh, yeah, sure, sure.

MR. STANCIL: And can we get a copy of yours as well, --

MR. MCENTIRE: Sure.

MR. STANCIL: -- while we're at it? Thanks.

The facts supporting the need for the gatekeeper provision are as follows. I will not read them all, but if you scroll about eight lines down, it says, During the last several months, Mr. Dondero and the Dondero-related entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. And then there are six separate enumerated examples of that.

Paragraph 78 on the next slide. Findings regarding Dondero postpetition litigation. The Bankruptcy Court finds that the Dondero postpetition litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted he would, quote, burn down the place.

Next slide. This is Paragraph 79. Necessity of the

gatekeeper provision. If you would just skim to the bottom of that first column, it says, Approval of the gatekeeper provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtors' assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.

And then came Paragraph 80, which we've just discussed. With respect, Your Honor, the question is, what is the meaning of Paragraph 80? And in context, following those paragraphs regarding vexatious litigation and abuse of litigation, it is simply implausible to suggest that colorability is a sub-12(b)(6) standard.

And that is Mr. McEntire's contention today, that the gatekeeping order is actually lower than the threshold that every other litigant faces. Everyone else has to file a claim, pass a 12(b)(6), and on they go to get to discovery. Mr. McEntire believes that the gatekeeping order imposes less than that on him, and then he's treated just like everybody else. It makes no sense whatsoever.

So I'll skip Slides 8 and 9, Your Honor, but that's where the Fifth Circuit described the gatekeeping orders, affirmed them in relevant part, citing *Barton*. There is no mystery here.

If you could flip, Your Honor, to Slide 10 very briefly. We've talked about this case a little bit in one of our status hearings, *In re Vistacare Group*. This is the leading case that describes what it is that one does under a *Barton* analysis, and it says that the trustee must make a -- pardon me -- a party seeking leave to sue a trustee must make a *prima facie* case against the trustee, showing that its claim is not without foundation. A *prima facie* case is more than a 12(b)(6).

And I would direct Your Honor to the language in the third bullet. It involves a greater degree of flexibility than a Rule 12(b)(6) motion to dismiss because the bankruptcy court, which, given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit. Boy howdy, are we -- I'm sorry. My kids are going to tease me for that.

But this -- no case has ever proved the wisdom of that statement, Your Honor. We are here, and the Court is all too familiar with the facts and the parties of this case. And we're not here on an adversary proceeding. We're here on a contested matter. And Your Honor has the authority on any contested matter to take evidence, and a broad, broad discretion as to what evidence is appropriate to meet that standard.

So we have laid out briefly in Slide 11 what -- why we

believe that -- or how we believe that the *prima facie* showing would work. And in short -- and maybe this will help us going forward -- we believe that if they make -- if a party seeking relief under the gatekeeping order says things, we have the right to rebut them, like in a burden-shifting or a burden of production -- pardon me -- analysis. So you can say that the sun rises in the west, but we can bring in evidence to say it doesn't, it rises in the east. And that's the plausibility threshold.

And here, and if Your Honor would flip to the next slide, I'm not sure it's entirely fair to say, even after they have purported to withdraw their evidence, that they've really done so. And we disagreed with Mr. McEntire, and advised him of such leading up to this hearing, that we do not agree that his redactions fully excise all of the evidentiary assertions from his motion.

And I'll just pick one example here on Slide 12. On the left is Paragraph 32 of the motion for leave prior to the purported withdrawal. On the right is Paragraph 32 after the withdrawal. Your Honor will see all they've withdrawn are the citations. It's verbatim. It's the same allegations. And they have argued various facts and put them in evidence. So even if it were true, and it's not, but even if it were true that all you get here is a 12(b)(6) ruling in the ordinary case if you put no evidence in dispute, they forfeited that

right by putting these facts and evidence in dispute in their motion.

The fact that they have withdrawn evidentiary support for their evidentiary assertions does not relieve them of the reality that they have made all sorts of factual arguments in their motion for leave, and as a contested matter we have the right to address it.

I'm proposing, Your Honor, unless you have questions on the cases on 13, 14, those are the cases where we have described the hearings that have been held under *Vistacare* and *Foster*, and I know more about the down-in-the-weeds of *Foster* than I ever cared to, but I don't want to repeat what's in our briefs.

If Your Honor is willing to flip to Page 15, this is an argument I've alluded to briefly, but boy, we don't hear -- we have not heard a single thing as to what function the gatekeeper serves, particularly in context of Your Honor's factual findings in the confirmation order, if all it means is 12(b)(6) or lower. It just, it's an unanswerable point that they just persist in ignoring.

But I'd like to address very briefly that third bullet, because at various times and in their brief they have cited, Hunter Mountain has cited, down here we call it *Louisiana World*, I think in the Second Circuit we call it *STN*, but this UCC derivative standing. There are, in fact, two elements one

has to pass for that, and that's a different context. The first is colorability as it's used in that context, and that is often a 12(b)(6) standard in that context. But still to have standing, to bring that claim on behalf of the estate, you have to show a cost-benefit analysis. As we've heard today, we've probably spent more in legal fees today, or over the last three months, than the purportedly excessive compensation to Mr. Seery. And so I would respectfully submit, if we were here on a *Louisiana World* or *STN* hearing, this would be an open-and-shut case just as well.

So if I could, Your Honor, if you are willing to jump ahead to Slide 17, I'd like to ask you -- and I do want to address the standing jurisdictional question a little bit.

THE COURT: Okay.

MR. STANCIL: Not to get into the weeds of standing, because I think we have briefed that out the wazoo in our papers, and I read this morning -- I think it was this morning -- from the Claimant Trust Agreement, which says they're not a beneficial interest.

But my understanding is that Article III standing, whether there is a theoretical injury in any way, that is -- that goes to Your Honor's subject matter jurisdiction under Article III, but that is not true of statutory standing under Delaware law or prudential standing. Those are -- those go to basically whether they state a claim.

So, Your Honor, I believe, can -- and I've confessed to my colleague that the only way I remember this is I screwed it up really, really badly when I was clerking years ago -- but I believe Your Honor can, and in this case should, rule on the standing ground in the alternative. Not on the Article III. Article III is binary. They either have it or they don't. But on the statutory standing, you can say -- I think you can hold that they do not have standing under Delaware law to pursue the claim, but even if they do have standing, and then reach the remainder.

And we know we're headed for appeal. We've heard -- pretty much two-thirds of the time this morning has been laying the groundwork for an appeal. And we would only like -- we would like to make sure that we give the Fifth Circuit a fulsome record.

So I would like to ask Your Honor to flip to Page 19. And this is really the end of, I think, what we need to do. So, Your Honor, what if we were here just on 12(b)(6)? So we've got a *quid*, we've got a *pro*, we've got a *quo*. They fail at each turn. Let me spend most of my time on the *quid*. I'll let the documents of which the Court can take judicial notice speak for themselves. I will let the bare-bones nature of the assertion -- and it's okay to put in a complaint something on information and belief, but you still have to pass *Iqbal* and *Twombly*. I can't say upon information and belief that I was

denied a starting position on the Knicks, right? I would like to believe that's the case, but it still has to be a plausible allegation.

Let's look at this chart. And this chart is taken right out of our brief. These are their numbers. This is at the bottom. And I want to -- I would like to take head-on this proposition that this is not a rational investment on their numbers.

So let's take the Stonehill purchase of Redeemer. They paid $78 million to earn a projected profit, according to the November 30 disclosure statement, of $19.71 million. By my arithmetic, that is a return of 25.27 percent. Even by Mr. Dondero's lights, that's a pretty good return.

I'm going to come back to why that's not the end of the return, but let's look at the Farallon purchase of Acis. Spent $8 million. Projected profit, $8.4 million. I'll take 105 percent return any day.

Let's look at the Farallon purchase of HarbourVest. Purchase price, $27 million. Projected profit, $5.09 million. That is -- oh, I can't read my own writing anymore -- I think that is 18.85 percent. I would again gladly take that every day of the week, whether it's a distressed asset or otherwise.

But let me make one really important point that Mr. Dondero obfuscated, Mr. McEntire does not acknowledge, and it is just a fact. These are projected profits if all Mr. Seery

does is hit the plan. November 30, 2021. If he does no better than what he thought these assets were worth then, this is the expected return. So for those trades that we've talked about, that's a slam dunk even on that.

But let's look about -- we'll talk about upside. Because, as Your Honor knows from doing bankruptcy cases, upside, it's all about upside for people who are purchasing claims. So it isn't just that their returns were capped at these already-ample percentages. If Class 8, for example, of Redeemer paid out in full, they would be making not -- oh, gosh, I'm not sure I should do this on the fly -- but they'd be recovering $137 million on the Class 8 claim, not the $97.71 million. So there's another $40 million of upside.

Even if it's a low-probability event, that's a -- hedge funds do that all day every day.

Same here with Acis. Paid $8 million, expected $16.4 million, but they could get up to $23 million.

Now, we've heard so much about how Class 9 was worthless, worthless, worthless. No, it's not. There's always the potential for upside. Paid $27 million. Could recover $45 million just on Class 8. Could recover another $35 million on Class 9. They could recover $80 million on a $27 million purchase. Now, the probability of that is complicated, but it's not zero. We know that it's not zero. All we've heard from them today is that Mr. Seery is -- could pay off 8 and 9

in full. So I don't think that is even remotely plausible.

Let's talk briefly about UBS. They like to talk about UBS for the projected profit of $3.61 million in loss. But that was -- that's in August, and that claim trades.

So a couple of things that happened between the November 30 disclosure statement setting that projected value and the purchase of the UBS claim in August. Number one is we are nine, ten months past the worst of COVID. And Your Honor could take judicial notice of massive market movements just if you do nothing.

We don't need to get to that, because we talked all morning about MGM. May 26th, it's announced publicly. May 26, 2021.

So the notion that a purchaser of a UBS claim in the summer of 2021, after this MGM transaction is announced, would think, you know what, I think these claims are only worth what they were worth back in November, is not plausible.

And so this is why the comparisons to the debt, the exit financing, well, 12 percent. That's a 12 percent capped return. We're talking here about returns of 25 percent, 105 percent, 18.85 percent, just based on projections at the -- sort of in the darkest days post-COVID.

So it's not plausible. If a court were looking at this just under the 12(b)(6) standard, we would be -- we'd be dismissing this claim as well. And we really -- respectfully,

Your Honor, we need that ruling. We think we need that ruling so that whatever the -- whatever they may say the standard is in the Fifth Circuit, we only have to go one time. And we really believe that we're entitled to that.

I'll let Your Honor -- I will just stand on the deck and our briefs on the *pro* and the *quo*. But meet-and-greets, these are just conclusory allegations in the complaint. He says they worked -- that he worked for them 10 or 15 years ago, which some of that's not even true, but even if it were all true, if I were beholden to every client I've met at a schmooze fest or everybody I worked for in a group 20 years ago or 15 years ago, you know, I would be incapable of operating without a conflict of interest. And it's just not plausible. This is something that needs to go.

Unless the Court has questions, I will cede the remainder of our time to Mr. Morris.

THE COURT: No questions. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: Thank you so much, Your Honor, for your patience. It's been a very long day. I am very grateful that we're going to finish today.

As I said at the beginning, I believe this exercise, as difficult as it may have been, is so important and so vital, preserving this estate and what's left of it.

The gatekeeper exists for very important reasons. Your

Honor made those findings in her order that has been upheld on appeal. And we're here to make sure that frivolous litigation is not commenced against my clients, or, frankly, against Stonehill and Farallon, given their capacity as Claimant Oversight Board members.

Hunter Mountain confuses argument with facts. There's no facts here to support anything, and that's what the gatekeeper is about. The gatekeeper is making sure that there's a good-faith basis to pursue claims. And as Mr. Stancil points out, it is certainly acceptable to state things upon information and belief. But the point of the gatekeeper is if somebody says -- not somebody says -- somebody offers proof that those beliefs are wrong, you no longer have a plausible claim. And that's why we thought it was so important to go through this exercise today. Because the facts show that their beliefs are simply wrong, and the entire complaint is based on their beliefs.

There is zero evidence concerning the compensation other than their belief that the compensation is excessive. The case is over. Like, you could stop there. I'm going to go through a bunch of things that -- you could stop there.

I want to actually begin backwards, though, in time, with the HarbourVest settlement. Right? After two years of litigation and re-litigation and re-litigation of the HarbourVest settlement, the claims of insider trading, finally

the Court has before it admissible indisputable evidence that Mr. Seery negotiated the terms of the HarbourVest settlement before he ever got this notorious email from Mr. Dondero. That should be a finding of fact in Your Honor's order and it should never be -- nobody should ever make that allegation again. It's over. You have the documents. You have the email from Mr. Seery to the board, here are the terms, and those are the terms Your Honor approved.

And there's more. Because this is so important for us, because we're tired of being accused of wrongdoing. We're tired of being falsely accused of wrongdoing.

$22-1/2 million. That's the valuation Mr. Seery put on it. You can see that he's doing it to his Independent Board colleagues, copying his lawyers. He's telling them where he got it, from Hunter Covitz. The evidence is now in the record. It came from a regularly-published NAV report from November 30th. It was seven days old. It can never be disputed again that $22.5 million was a fair value, not based on some subjective view of Mr. Seery but based on the person who gave him the report that everybody relies upon that Mr. Dondero got.

And it was ratified yet again in the audited financial statements that came out, and it shows for the period ending -- this is Exhibit 60, I believe -- for the period ending December 31, 2020, $50 million. Okay, so it went up a few

million dollars in December.

This is their case? This is the case? Your Honor I know is still working on the motion to dismiss. That's Mark Patrick, right? That's the complaint that he brought. That's what this is about. I don't mean to confuse the issue, but it's time to put this stuff to rest, because it's wrong. Mr. Dondero has lost and he's got to get over it at some point.

But here's the best piece of evidence about this whole shenanigans about MGM being inside information. Mr. Dondero filed a 15-page objection to the HarbourVest settlement and didn't say a word about it. How is that possible? Six days before the settlement, he sends this email. Two weeks later, in January, he files a 15-page objection and doesn't mention anything about insider trading, MGM, or any wrongdoing by Mr. Seery. In fact, he argues the exact opposite, that Mr. Seery cut a bad deal. How is that possible? This is a plausible claim?

It gets better, or worse, depending on your point of view. CLO Holdco filed an objection and they said they're entitled to buy the asset. This is Mr. Dondero's, you know, operating arm of the DAF. They lost -- they actually had an honorable person who concluded, I don't really have that right. But these are the claims that Mr. Patrick is asserting, and he asserted them on April -- in April, before the MGM deal was announced. Right? And Your Honor found, and that's why it

was so important for the Court to take judicial notice of the second contempt order, because Mr. Dondero was intimately involved in bringing those claims and in bringing those claims against -- or trying to bring those claims against Mr. Seery, in violating of the gatekeeper. This is all tied together.

I have to tell you, I don't know why we're not doing Rule 11. Forget about colorable claims. This is a fraud on the Court. It really is. And I don't know when it's going to stop. I'd love to move on with my life, to be honest with you.

The tender offer. He's out there doing a tender offer benefitting as the fund that he manages acquires more shares and his interest goes up and the value goes up with all these MGM holdings. Really? And he's going to accuse Mr. Seery of wrongdoing?

There was one point of Mr. Dondero's testimony that made my heart skip a beat. It's when he referred to the need to get discovery. And why did it skip a beat? Because he actually had a moment of candor where he admitted that the notion that Mr. Seery gave them material nonpublic inside information was his thought. It's not anything that Farallon ever told him. And then it spins and it spins and it spins, and finally when he gets to the fifth version of his sworn statement MGM suddenly appears. It's not right. Colorable claims? Fraudulent claims.

What's the undisputed evidence right now? I'll take Mr. Dondero at his word that Mr. Patel told him that Farallon bought the claims in February or March. How did they reconcile that with the undisputed testimony that Mr. Seery thereafter invited Farallon to participate in the exit financing? And they signed an NDA in early April. Why would you sign an NDA if you already got inside information? Who would do that? What would be the purpose of that?

How do you reconcile the fact that, according to Mr. Dondero, the claims were already in Farallon's pocket when they signed an NDA to get information for an exit facility. Is that plausible?

We've heard Mr. McEntire say a bunch of times it's much broader than MGM. Not only not a scintilla of evidence, but no substantive allegation. Again, confusing argument with facts. Because he had -- yes, Mr. Seery had access to inside information relative to Highland. He's the CEO. But where is the evidence that he shared anything with anybody? There is nothing.

Mr. Dondero admitted in his motion -- in a moment of candor, he said that's what he concluded based on the fact that Mr. Patel supposedly told him, I bought because Seery told me to. He made the inference. No evidence. Nothing.

They're bringing this case for the benefit of innocent parties? These people have told you time and again that

assets exceed liabilities. What innocent parties? Where are they and how come they're not -- let's get to that point, too. Because they're saying, oh, Mr. Seery is, like, just not declaring the end of this. Seriously? How much do they think Mr. Seery should reserve for indemnification claims as we do trials like this with a mountain of lawyers billing $800, $1,500 an hour? Seriously? Mr. Seery is somehow acting in bad faith by not declaring the end of this case? How much is he supposed to reserve? They keep skipping over that. We'll talk about that in the mediation motion. We'll talk about that in the Hunter Mountain motion in July. Who's prosecuting that? Mr. Dondero's lawyer. I know there's a really big separation between Hunter Mountain and Mr. Dondero, but Stinson is prosecuting that claim on behalf of Hunter Mountain when they're seeking information.

And they complain about the legal fees? We've put our pens down. Kirschner put his pens down. We put down the claim objection. What we're doing is defense at this point.

We're awaiting the ruling on the notes litigation, and we will very much prosecute the vexatious litigant motion if Judge Starr grants the pending motion to exceed the page limit that's been out there for months. I'm not sure what's happening there. We'll do that for sure. But otherwise, we're just playing defense.

We're here today because they've made a motion, a motion

that lacks any good-faith basis whatsoever. And that's why today was so important, so the Court could hear the witnesses. They could -- the Court -- I mean, think about it. Texas State Securities Board. The audacity of saying that somehow a letter from the Texas State Securities Board saying they're taking no action after conducting an investigation of Dugaboy's claim of insider trading is irrelevant? Like, what?

I've told you before, all we do is play Whack-A-Mole. Whack-A-Mole. They make an argument, we prove it's frivolous, so they just make a new argument. Their pleading says their claims are colorable because there's an open investigation. Now there's no investigation and they say that's irrelevant. How can they say that with a straight face? I couldn't.

I want to talk about Mr. Seery. I want to finish with my Mr. Seery. I may not use all my time. We can go home early.

(Laughter.)

THE COURT: It's past early.

MR. MORRIS: But this guy has worked doggedly, Your Honor, and I will defend him until the end of time. He's a man who has so far exceeded expectations. And they're saying he's not -- he's overpaid? The guy is overpaid? When he's into Class 9? When he's being pursued with these frivolous claims? Every day he's being attacked. How much do they think he should be paid? I would have loved to -- I hope -- no, I don't hope. I don't think there's any reason to hear

expert testimony. I think Your Honor should exercise -- the Court should exercise its discretion and say there's no need, the Court doesn't need to hear expert testimony.

But if we do, I'll be delighted to hear their expert's view on what Mr. Seery -- if it's not $8.8 million for all these years, what should it be, after he takes an estate from 71 percent on the 8s to, according to them, assets exceed liabilities, 9s are paid in full?

You know what? If they put their pens down, maybe there would be a conversation. But as long as we keep doing this ridiculous, baseless, frivolous litigation, Mr. Seery is going to conserve resources, because he's got to pay people like me to defend him and to defend the estate. This is a preview of what we'll talk about at the mediation motion. He's doing a great job. He's devoting his life to it. He has no other income. He's got no other job. It's wrong.

The claims are not only not colorable, they are frivolous. I ask the Court to stop this in its tracks right now.

Thank you very much.

THE COURT: Thank you.

All right. Is there any time for the Movant to have the last word, which we usually give the Movant the last word.

THE CLERK: The Movant, I think, has a little under -- maybe about a minute left.

THE COURT: Anything you want to say in a minute?

MR. MCENTIRE: Yes, just I'll take 30 seconds. How is that?

THE COURT: Okay.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN

MR. MCENTIRE: I just want to direct your attention to our reply brief, specific paragraphs that address your question about authorities. We do cite several cases on Page 41, 40 and 41, dealing with the issue of unjust enrichment. That's it.

Thank you, Your Honor, very much.

THE COURT: Okay. Thank you. Unjust enrichment?

MR. MCENTIRE: Disgorgement.

THE COURT: Okay. But I was really, you know, claims trading in the bankruptcy context, just your best --

MR. MCENTIRE: Well, I think the cases that you identified were our best cases. The --

THE COURT: Okay.

MR. MCENTIRE: -- *Adelphia* and the other cases.

THE COURT: All right. Well, --

MR. MCENTIRE: There are other cases, Your Honor, in different contexts. There's also the *Washington Mutual* case dealing with equitable disallowance. There's also the *Mobile Steel* case, a Fifth Circuit --

THE COURT: *Mobile Steel*? Oh, my goodness. Okay.

MR. MCENTIRE: Okay. All right.

THE COURT: 1968? Or no. That doesn't mean it isn't still quoted often, but --

MR. MCENTIRE: Those would also be relevant.

THE COURT: Equitable subordination --

MR. MCENTIRE: Yes, ma'am.

THE COURT: -- when there's bad acts.

MR. MCENTIRE: And Footnote #10 in the *Mobile Steel* case. That is relevant, too. Just, --

THE COURT: Okay.

MR. MCENTIRE: Thank you.

THE COURT: All right. So I gave a deadline of Monday, right, --

MR. STANCIL: Yes.

THE COURT: -- to reply to the response to the motion in limine?

MR. STANCIL: Yes, Your Honor. Do you want time before you leave for the day? I mean, it's not going to be that long, so 4:00 o'clock Monday? Does that work for you?

THE COURT: I don't care. I probably won't start looking at it until the next day.

MR. STANCIL: But I will -- I'll just reserve and so I don't have my associates --

THE COURT: Yes. I think these days midnight, 11:59 p.m., is what lawyers tend to want.

MR. STANCIL: Oh, not this lawyer.

THE COURT: Oh, well, okay. Okay. So I'll just have to look at this, and probably by Friday of next week I will reach out through Traci and let you know what my decision is on whether we're going to have another day of just 30 minutes, 30 minutes of experts.

MR. MCENTIRE: Your Honor, another housekeeping matter. You'd wanted a copy of our PowerPoint, --

THE COURT: Yes.

MR. MCENTIRE: -- which I'm pleased to give you. We found a typo that we can correct electronically on the version I showed.

THE COURT: Uh-huh.

MR. MCENTIRE: I likely will send that to you and I can copy opposing counsel. Is that --

THE COURT: Okay. Send it to Traci Ellison, my courtroom deputy.

MR. MCENTIRE: All right.

THE COURT: And she'll --

MR. MCENTIRE: We'll do that first thing in the morning.

THE COURT: Okay.

MR. MCENTIRE: So you'll have a copy --

MR. STANCIL: Can we get the hard copy that -- from today, though?

MR. MCENTIRE: No, that had a typo on it. I really

don't want to share it. We fixed it.

THE COURT: What? I'm sorry, what?

MR. MORRIS: That's fine.

MR. STANCIL: Never mind.

THE COURT: Do I not need to know?

MR. STANCIL: Let's all go home.

THE COURT: Okay. And then my last question is -- and there was a mention of the CLO Holdco lawsuit, where there's a pending motion to dismiss. There's an opinion I'm writing well underway. I just keep getting sidetracked by other things. Imagine that. So I know that people are wanting to get an answer to that. So, trust me, it's going to get done here pretty soon.

You mentioned Brantley Starr. I mean, it is not my role to pick up the phone and call him and say hey, --

MR. MCENTIRE: No, I wasn't suggesting that.

THE COURT: -- District Judge, get busy on that.

MR. MCENTIRE: Yeah.

THE COURT: But I'll at least tell you, I know the man seems to have more jury trials than any judge I've seen in this building, so I suspect he's working late hours trying to get things done.

MR. MCENTIRE: Yeah.

THE COURT: What do we have upcoming? We have what you called the mediation motion. When is that set?

MR. MORRIS: June 26.

THE COURT: June 26th. Be here before we know it.

MR. MORRIS: Yeah. And just to keep the Court informed, the Movant's reply was due today. We gave them a week extension. They asked earlier today. I saw in my email we gave them. So I think you should expect the reply on the 15th. The hearing is the 26th, and that's not in person.

THE COURT: Okay. Well, I'm very interested to dive into those pleadings. I knew the motion was coming because one of the lawyers said at a prior hearing it would be coming. So I haven't read any of those pleadings, but, well, I'm just very interested to hear how this plays out. I mean, I've said it before.

MR. MORRIS: Uh-huh.

THE COURT: We had global mediation in summer of 2020. We had two very fine mediators. We had a heck of a lot settled, to my amazement. But we're now way down the road and whole lot of money has been eaten up fighting lots of stuff. I mean, it would have to be pens down. There's an enormous amount out there that would have to be part of it, and I just don't know if everyone is fully appreciating that. I hope they are. Anyone listening. We're really, really far down the road now, and there's just how many appeals? Someone at one time told me there were 26. I bet it's more than that by now.

MR. MORRIS: I think that's right. I think we argued on Monday, what is it, the sixth of nine appeals in the Fifth Circuit. And we've got, you know, a cert petition that we're waiting to hear from on the Supreme Court. And yeah, there's still a couple dozen matters in the district court.

THE COURT: Okay.

MR. MORRIS: Not one of them, not one of them we're prosecuting, with the exception of waiting on the Court to rule on the Report and Recommendation on the notes litigation and vexatious litigant. We are not the plaintiff, movant, in anything.

THE COURT: We've got adversaries. The Reports and Recommendations. That's just made everything go a lot slower. But all right. So we have that. And anything else coming up?

MR. MORRIS: I think on July 11th maybe there is a hearing scheduled on Hunter Mountain. If you recall, Hunter Mountain had that valuation motion last year that you denied on the grounds that they didn't have a legal right to valuation information. They made a motion earlier this year for leave to file an adversary proceeding to assert an equitable claim and some other declaratory relief, is my recollection.

While we filed an opposition, we didn't oppose the relief requested, so that motion got resolved. They have filed an adversary proceeding. And I think, if I remember correctly,

our response to the complaint, maybe that's what due. Oh, the 11th is a status conference. It could be a status conference, maybe to set a scheduling order.

THE COURT: Okay.

MR. MORRIS: But that's it. I think that's the only thing on the calendar.

THE COURT: That's a lot.

MR. MCENTIRE: Thank you.

THE COURT: Anything else? Okay.

MR. STANCIL: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 7:18 p.m.)

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CERTIFICATE

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

/s/ Kathy Rehling **06/12/2023**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

INDEX
Page 2

HMIT'S Exhibits, cont'd.

Debtors' Exhibits

INDEX
Page 3

Debtors' Exhibits, cont'd.