

No. 3:23-cv-00726-S

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

In re James D. Dondero et al.,
Petitioners.

On Petition For Writ Of Mandamus To The
United States District Court For The Northern District Of Texas
(Bankruptcy Case No. 19-34054-sgj11)

APPENDIX TO REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Michael J. Lang
CRAWFORD WISHNEW & LANG, PLLC
1700 Pacific Ave., Suite 2390
Dallas, Texas 75201

(214) 817-4500 telephone

ATTORNEYS FOR PETITIONERS



Ex.	Title	Publication	Appendix No.
1.	<i>Renegade Texas Judge Who Faced Calls for Recusal Now Entangled in Insider Trading Allegations Around MGM and Amazon Merger</i>	Radar Online	APP. 001-004
2.	<i>Court Opinion Review: Delaware VC Knocks Out Spurious (Nonbankruptcy) Releases, Vertical Gifting Via 363 Sales, Mid-Market Madness in Houston and Judge Jernigan's Novel Dilemma</i>	ReOrg	APP. 005-007
3.	<i>Judge's Fictional Thriller Sparks Real-Life Courtroom Drama</i>	The Wall Street Journal	APP. 008-010
4.	<i>Bench Report Newsletter: Should This Judge Recuse?/Long-Pending Appellate Nominee Confirmed</i>	Law.com	APP. 011-013

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Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

By: /s/ Michael J. Lang

Michael J. Lang

Texas State Bar No. 24036944

mlang@cwl.law

1700 Pacific Ave, Suite 2390

Dallas, Texas 75201

Telephone: (214) 817-4500

CERTIFICATE OF SERVICE

The undersigned certifies that, on January 22, 2024, a true and correct copy of the above and foregoing document was served on all parties of record via the Court's e-filing system.

/s/ Michael J. Lang

Michael J. Lang

Renegade Texas Judge Who Faced Calls for Recusal Now Entangled in Insider Trading Allegations Around MGM and Amazon Merger

Radar Online

By Radar Online Staff

9 September 2023

[View on web](#)



SOURCE: @SJNOVELS/INSTAGRAM

The bizarre case of the Texas bankruptcy judge, who was accused of writing legal novels based on real-life cases heard before her court, has taken yet another twist, RadarOnline.com has learned. Back in July, it was reported that Judge **Stacey Jernigan** faced renewed calls for recusal from a case after publishing novels with characters that had a striking similarities to herself as well as hedge fund manager **Jim Dondero** of Dugaboy Investment Trust, who was involved in the Highland Capital Management bankruptcy case that was before her in court.

Jernigan served as the Chief Bankruptcy Judge for Northern District of Texas. She was entangled in a SEC whistleblower complaint regarding insider trading around Amazon's \$8 billion purchase of MGM in 2021, multiple sources have confirmed.

The whistleblower complaint alleges that federal Judge Jernigan turned a blind eye to insider trading in her courtroom by the Trustee she empowered to oversee the now four-year-old Highland Capital Management bankruptcy. Highland Capital Management initially filed for bankruptcy in Delaware in 2019, per reports, but the petition was transferred to the U.S. Bankruptcy Court for the Northern District of Texas, where Jernigan presides.

It's alleged that Trustee James Seery improperly used insider information to profit from the mega-merger between Amazon and MGM following rubberstamp rulings by Judge Jernigan.

In the Complaint to Compel Disclosures about assets of the Highland Claimant Trust, it states that the plaintiffs are requesting a "close evaluation of current assets and liabilities" and claims the litigation has served to enable James P. Seery and other estate professionals "to carefully extract nearly every last dollar out of the estate (along with incentive fees), leaving little or nothing for the owners that built the company."

The valuation motion from May 2023 states, "Mr. Seery, first acting as Chief Executive Officer and Chief Restructuring Officer of the Debtor and then as the Claimant Trustee, facilitated the sale of creditor claims to entities that had undisclosed business relationships with Mr. Seery; entities that Mr. Seery knew would approve inflated compensation to him when the hidden but true value of the estate's assets were realized."



SOURCE: @SJNOVELS/INSTAGRAM

The Trustee acquired a creditor's interest in an entity that held a large amount of MGM stock at a huge discount to its actual value, knowing MGM's value would significantly increase with the deal, the valuation motion states.

It is alleged in the motion that Trustee Seery falsely testified in Jernigan's court in support of an outdated and materially lower \$22 million valuation, which resulted in a massive fraudulent windfall. In fact, by May 26, 2021, the interest was worth an astounding \$55 million.

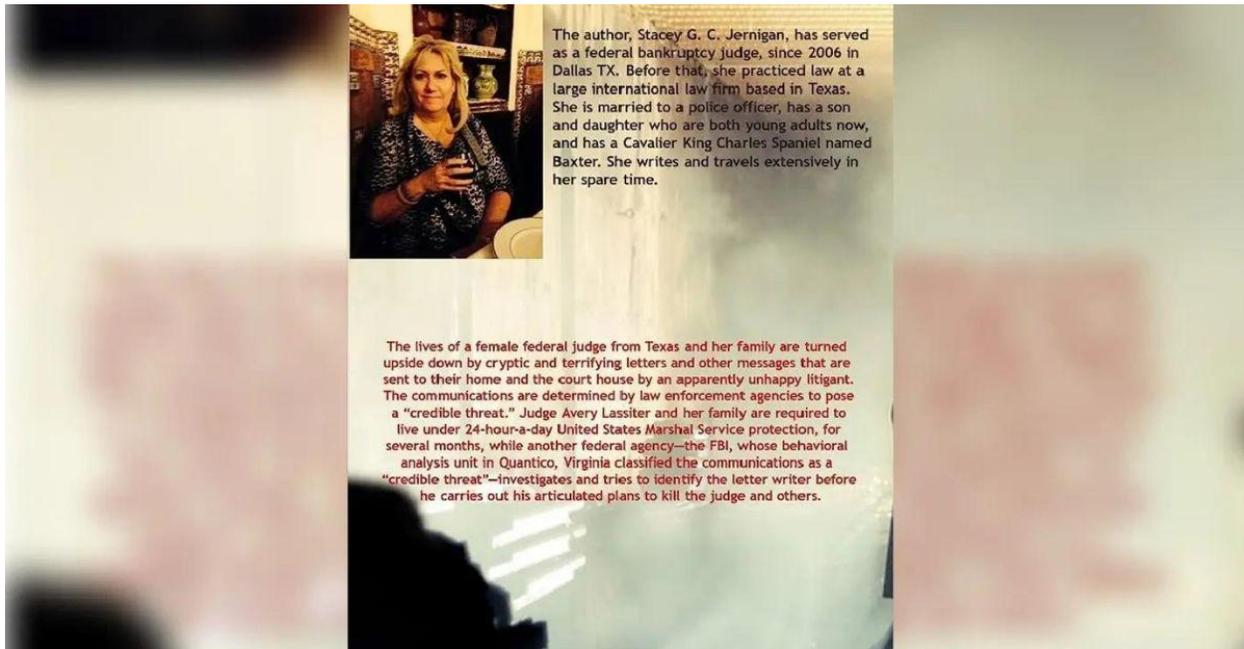
According to the valuation motion, "Amplifying the lack of transparency, Mr. Seery further engineered transactions that also served to hide the real value of the estate. For example, he authorized the Debtor to settle the claims of HarbourVest (which claims had initially been valued at \$0) for \$80 million, in order to acquire HarbourVest's interest in Highland CLO Funding, Ltd. ("HCLOF"), gain HarbourVest's vote in favor of its Plan, and hide the value of Debtor's interest in HCLOF by placing it into a non-reporting subsidiary. This created another pocket of non-public information because the pleadings supporting the 9019 settlement valued the HCLOF interest at \$22 million, when, on information and belief, it was worth

\$34.1 million at the time, about \$40 million when the settlement was consummated, and over \$55 million 90 days later when the MGM sale was announced."

When these serious securities law charges were brought to Judge Jernigan's attention, she allegedly rejected hearing from industry experts and issued yet another rubberstamp ruling in the Trustee's favor, according to the Order Granting Joint Motion to Exclude Expert Evidence.

An excerpt from the HCM Fund Advisors Recusal Motion underscores the animosity towards Dondero: "At the same time, the Court has summarily rejected any challenge to the Debtor's actions, evincing a dogmatic belief that the Debtor and its current management can do no wrong. Moreover, Movant and other challengers to the Debtor have repeatedly been thrown out of court on unusual procedural technicalities. The Court also has stymied every attempt to hold someone on the Debtor's side accountable under federal law, with opinions that are frequently accompanied by extensive exposition of the Judge's unevicenced speculation regarding what dastardly plan she foiled."

In bringing the complaint forward, the plaintiffs are seeking transparency about the assets currently held in the Claimant Trust and their value.



SOURCE: AMAZON

As reported previously by RadarOnline.com, Dondero and others are also seeking removal of Judge Jernigan from the bankruptcy proceedings related to Highland Capital Management. Former Kansas Appellate Judge Steve Leben has asserted that a reasonable observer would question the Judge's impartiality based on two novels that she wrote that have a bias against hedge fund managers in general, and Dondero in particular.

The filed objection included an expert report from Leben, who was asked by Dondero's company to review the novels and opine whether they would form a basis for recusal under the applicable standards.

“Here, the protagonist in Judge Jernigan’s books, published while Jernigan presided over bankruptcies involving Dondero-related hedge funds, is closely modeled on Judge Jernigan, so a reasonable observer would associate the protagonist judge’s views with Judge Jernigan’s,” the opinion letter stated.

The protagonist in Jernigan’s first self-published novel, *He Watches All My Paths*, and its sequel, *Hedging Death*, makes “strong negative comments about hedge-fund operators in both books,” according to the motion to transfer the case, and a “major villain” in the second book bears a striking resemblance to Dondero.



SOURCE: @SJNOVELS/INSTAGRAM

The novels are stated as works of fiction, but according to the recusal motion, “there can be little doubt that the books are based upon Chief Judge Jernigan’s experiences as a sitting bankruptcy judge — and, in particular, from the experience presiding over the HCM and Acis bankruptcies.”

The motion states that the two novel’s protagonist named Judge Avery Lassiter “is closely modeled on Judge Jernigan. Both judges hear bankruptcy cases in Dallas; both judges worked at a large Dallas law firm before taking the bench; both judges are married to a police officer; both judges have two children, a girl and a boy; and both judges have a Cavalier King Charles Spaniel breed dog named Baxter. And like Judge Jernigan in the Acis and Highland Capital bankruptcies, “[t]he novel’s protagonist presents a starkly negative view of hedge funds and their operators.”

Judge Jernigan has said that her novels were “entirely fiction” and “not about Mr. Dondero or the hedge fund industry in general.”

Court Opinion Review: Delaware VC Knocks Out Spurious (Nonbankruptcy) Releases, Vertical Gifting Via 363 Sales, Mid-Market Madness in Houston and Judge Jernigan's Novel Dilemma

ReOrg

By Kevin Eckhardt

28 July 2023

[Unrelated text omitted.]

Life and Art

Hoo-boy, have we been trying to find an excuse to write about the fight over Judge Stacey Jernigan's novelistic career in the Highland Capital case for a long time. The problem has always been what can we possibly add to this? Now that the dispute has landed on the desk of another judge in the Northern District of Texas, we have to give it a shot.

Hedge fund Highland Capital filed chapter 11 in Dallas way back in October 2019 after investors secured a \$189 million arbitration award arising from losses way back in the 2008 financial crisis. The case quickly bogged down in litigation between investors and principal James Dondero, whom the investors accuse of looting the company. Judge Jernigan confirmed a plan appointing a claimant trustee to clean up the mess in February 2021 -though Dondero continues to insist there is no mess, and that the trust assets are sufficient to pay all creditors in full and return value to him. The parties took months to agree on mediation but are giving it a shot .

Meanwhile, on March 22, 2022 - a couple weeks after the Fifth Circuit heard oral argument on Dondero's confirmation appeal - a new "Judge Avery Lassiter" novel appeared on Amazon, subtly titled "Hedging Death."

According to Amazon, the novel involves "a wealthy Texas hedge fund manager" who "is suspected of insurance fraud and mysteriously goes missing in Mexico." Then "a brilliant young inventor in the infectious disease space" who received funding from said hedge fund manager also goes missing amid allegations of a Ponzi scheme "being litigated in Judge Lassiter's court."

“Are their disappearances connected, and how are they linked to the man who tried to kill Judge Avery Lassiter and other judges and lawyers three years ago? And who will find them first - Max Lassiter or the Mexican crime cartels that they have double-crossed?” We cannot wait until our request to spend \$21.99 on a paperback gets approved by Reorg High Command so we can find out!

As you have no doubt guessed, Judge Stacey Jernigan is the author of the Judge Avery Lassiter potboilers, and James Dondero does not like the idea that the bankruptcy judge presiding over his case wrote a novel about an evil hedge fund manager while the case is ongoing. On Feb. 23, Dondero asked Judge Jernigan to recuse herself, asserting that evil hedge fund managers in two of Jernigan’s books are “patterned” after him.

According to Dondero, the other book at issue - “He Watches All My Paths,” released January 2019, after a prior bankruptcy in which Dondero was involved - evidences the judge’s lack of impartiality toward himself and the hedge fund industry generally. That book, Dondero says, describes the financial industry as dominated by “[h]igh flying hedge fund managers’ that ‘suck up money like an i-robot vacuum’ and seem to ‘make money no matter what’ and who routinely show ‘outrageous amounts of hubris’ as part of their ‘bro culture.’”

We’ll give the judge a pass for not making the obligatory (and outdated) Patagonia fleece vest reference; she only sees these guys in suits in the courtroom.

Dondero points out several similarities between the “Hedging Death” baddie and himself: The villain is a hedge fund manager, founder and CEO of Dallas-based Ranger Capital (Highland’s original name was Ranger Asset Management, though Judge Jernigan denies knowing this); Ranger seeks chapter 11 protection because of investor litigation; and Ranger is a multibillion-dollar conglomerate that manages “exactly the same unusual mix of investments” as Highland, including life settlement portfolios.

On March 6 Judge Jernigan denied Dondero’s recusal request and his claims that the hedge fund villain is his alter ego, though she conceded that “[m]any fiction authors write stories” with characters “loosely based on real life people” and use plots “loosely based on real life events.” “Judge Avery Lassiter, the main character in this novel, is not me,” the judge insisted.

Fair enough, except, in a July 10 motion in front of an entirely different NDTX judge (yes, this seems like the fifth recusal motion, but we are skipping all of the procedural details because ugh), Dondero went ahead and secured an opinion from an actual judicial ethicist concluding that Judge Jernigan shouldn’t hear Dondero-related matters.

“Here, the protagonist in Judge Jernigan’s books, published while Jernigan presided over bankruptcies involving Dondero-related hedge funds, is closely modeled on Judge Jernigan, so a reasonable observer would associate the protagonist judge’s views with Judge Jernigan’s,” Professor Steve Leben says. Further, “[t]he books’ protagonist made strong negative comments about hedge-fund operators in both books and the author made a hedge fund operator with similarities to Dondero a major villain in the second book.”

“Under these circumstances, a reasonable observer would question Judge Jernigan’s impartiality in presiding over bankruptcy cases involving Dondero’s hedge funds and other parties related to Dondero,” Leben concludes.

Remember all of our warnings about the tenuous legitimacy of bankruptcy courts? This isn't as big a head scratcher as, say, trying to lure mega-cases to Dallas by creating a web page that tells potential debtors which judge gets assigned to the next big case so they can pick and choose, but it sure doesn't help.

Judge’s Fictional Thriller Sparks Real-Life Courtroom Drama

The Wall Street Journal

By Erin Mulvaney

29 July 2023

Plot featuring crooked hedge-funder inspires actual financier to try to get jurist booted off case

When she isn’t handling cases as a U.S. bankruptcy judge, Stacey Jernigan writes legal thrillers, most recently “Hedging Death,” whose sweeping plot features a troubled biotech company, a crooked financier and Mexican criminal cartels.

In true write-what-you know fashion, her fictional heroine, Avery Lassiter, bears a striking similarity to the author herself. They are both judges in Texas, former corporate lawyers and dog lovers married to police officers.

James Dondero, former chief executive of hedge-fund company Highland Capital Management, sees another similarity in the novel—between one of the villains and himself.

Dondero says he is the inspiration for Cade Graham, a Dallas hedge-fund playboy suspected of insurance fraud and faking his own death in a fiery car crash. And in a plot twist not yanked from the novel, he is pushing for the judge-cum-writer to step aside from a case she is handling that involves none other than the real-life hedge-funder—Dondero.

Like many fictional works, Jernigan’s book includes a disclaimer that its characters “are absolutely fictional.” Nevertheless, citing “unquestionable parallels” between his life and Graham’s, Dondero is arguing that the fictional depiction exposes Jernigan’s real-life bias against him in the long-running legal case.

Jernigan has rebuffed his efforts so far, at one point quoting Oscar Wilde: “Life imitates art far more than art imitates life.”

Highland Capital, once a pioneer in trading speculative corporate loans, filed for bankruptcy in 2019 after it became embroiled in a series of legal disputes. The case landed in Jernigan’s court. Dondero, who was subsequently ousted from Highland, has been fighting with the bankrupt firm and its creditors over its winddown.

Dondero claims Jernigan, who has held him in civil contempt twice, hasn’t been fair to him during the bankruptcy proceedings. He has sought her recusal several times—to no avail. Dondero has asked a federal district court to reconsider.

His latest attempt to boot Jernigan cited her fiction writing as evidence of her negative views of the hedge-fund industry. Her first novel, “He Watches All My Paths,” revolves around death threats to the fictional Judge Lassiter. Her second follows the manhunt for the criminal. Both are self-published.

Dondero sees parallels between himself and Graham, one of the villains in the second novel. The novel describes Graham as a “well-known wealthy playboy and high-flying Dallas hedge fund manager,” and as “a real piece of work...a ton of people hate him, don’t trust him, and can’t figure out how on earth he manages to make so much money in both good times and bad times.” The novel involves Graham in a plot to murder American retirees in Mexico for insurance money.

According to Dondero, the fictional hedge fund, called Ranger, handles assets similar to those of his former firm, which he said in a court filing was once called Ranger Asset Management. Jernigan’s novels show disdain for hedge-fund managers, he says, citing passages that describe the industry as having “outrageous amounts of hubris” and a “bro culture.”

In a written statement to The Wall Street Journal, Dondero said: “The impartiality of judges—and the appearance of impartiality—is a critical component of the federal judiciary. We are well past the point that a reasonable person would see bias.”

Jernigan, who has been a judge since 2006, has said he has inundated the court with thousands of pages of material related to recusal requests that were untimely and without merit. The judge, who didn’t respond to requests for comment, addressed her fiction briefly in one March opinion, saying that even though some of her work is loosely based on real life, no characters were inspired by Dondero. Jernigan’s opinion said she had “never once heard” that Ranger was Highland’s original name.

In the ruling, Jernigan said she “regrets this sideshow,” but added that many sitting judges write books, though usually nonfiction rather than fiction.

In 2013 Senior U.S. District Judge Michael Ponsor published “The Hanging Judge,” a novel about a death-penalty trial. The book came about a dozen years after he presided over the first death-penalty trial in Massachusetts in 50 years, though the facts of the case were far different.

Frederic Block, a senior U.S. district judge in New York, wrote a legal thriller “Race to Judgment,” described on Amazon.com as a “reality-fiction” novel, which is loosely based on a number of high-profile

cases he handled. Of course judges should be careful about what they write, he says, but they have important stories to share.

In her order declining to step aside, Jernigan said there were countless examples of authors, from Agatha Christie to Ernest Hemingway, who weave fictional plots that are loosely based on real-life events. “The Presiding Judge is somewhat embarrassed to discuss these literary greats in the same paragraph in which she is mentioning her own fiction works—it is merely to make a point,” she said in the ruling.

Dondero’s legal team hired law professor Steve Leben of the University of Missouri-Kansas City School of Law to take a look.

“To be sure, the two judges aren’t identical, and the book doesn’t come across as nonfiction,” Leben wrote to the court this month. “But while it’s common for fiction authors to draw on their own lives, experiences, and viewpoints to varying degrees, Jernigan has made the similarities numerous and obvious.” He concluded the judge ought to recuse herself.

Dondero’s former hedge fund Highland, for its part, has opposed his recusal attempts and called him a “vexatious litigant,” petitioning this month to limit his legal maneuvering.

Legal ethics experts said what matters is whether Jernigan’s impartiality might be reasonably questioned.

“It is a pretty novel situation—pun vaguely intended,” said Indiana University law professor Charles Geyh. While many judges write outside of court, he said, “this is complicated as a work of fiction, and the way we evaluate it is tricky.”

At least some readers of “Hedging Death” are fans. It scored 4.9 of five stars on Amazon.com, based on eight reviews.

One of her judicial colleagues lauded it in the American Bankruptcy Institute Journal, calling it a courtroom drama with a “Texas flavor” and a surprise ending. “The book,” Judge Harlin Hale wrote, “truly has something for every insolvency professional!”

Bench Report Newsletter: Should This Judge Recuse?/Long-Pending Appellate Nominee Confirmed

Law.com

By Avalon Zoppo

21 July 2023

Bankruptcy Judge faces recusal motion due to her novel that allegedly mirrors -- and disparages -- the litigants.

Happy Friday from Avalon and Brad, and welcome to another roundup of the week's news about the judiciary. This week, Avalon talked to an ethics expert about a recusal showdown happening in a bankruptcy court in Texas, where one litigant alleges that the judge's legal thriller shows bias against him and the hedge fund industry. Plus, Brad took a look at the newest Biden nominees confirmed by the Senate.

As always, please reach out to us at BKutner@alm.com or AZoppo@alm.com with any tips or feedback. Follow us on Twitter at @AvalonZoppo and @BradKutner.

Recusal Row

Should a Texas bankruptcy judge accused of basing her novel off a litigant in a Chapter 11 proceeding she's overseeing be forced to recuse?

That's the argument put forth by former Highland Capital Management CEO James Dondero, Dugaboy Investment Trust and others in an [April 4 petition for mandamus](#) seeking the removal of Chief U.S. Bankruptcy Judge Stacey Jernigan from the Highland Capital Management bankruptcy proceedings.

And last week, former Kansas Court of Appeals Judge Steve Leben weighed in on a related matter, saying additional cases involving entities related to Dondero should not be consolidated under Jernigan because a reasonable observer would question her impartiality based on details in her two novels, "Hedging Death," published in 2022, and "He Watches All My Paths," published in 2019.

In the matter at hand, Dondero contends "Hedging Death" includes a villain who is a hedge-fund operator with similarities to him. Dondero also says both of Jernigan's books have a judge protagonist who makes negative comments about hedge funds, showing Jernigan's bias against the industry.

"The novel's protagonist presents a starkly negative view of hedge funds and their operators. If an actual judge presiding over a case involving a hedge-fund operator made statements like this, the judge would be disqualified," Leben, a law professor at the University of Missouri-Kansas City, wrote in the July 10 [letter](#) filed alongside Dugaboy's [objection to transferring](#) the additional Chapter 7 bankruptcy proceedings to Jernigan.

Jernigan has declined multiple times to step aside from the Highland Capital Management bankruptcy on grounds the novels are, by definition, works of fiction.

In a [March order](#) rejecting a motion to recuse, Jernigan pointed to disclaimers at the beginning of each book that note they aren't based on real events.

One disclaimer, for example, reads: "While some of the characters and events beyond the Prologue may be loosely based on actual persons and events, and some of the places... are certainly very real, the human characters in this novel are absolutely fictional."

But Charles Geyh, an Indiana University law professor, said Jernigan should still be disqualified because a reasonable person could conclude that she holds Dondero and the hedge fund industry in low regard, based on the details in the book that connect to real life.

In the pending petition in district court seeking Jernigan's recusal, Dondero and Dugaboy Investment Trust alleged several similarities between "Hedging Death" and the bankruptcy case before Jernigan:

- The novel involves a Dallas-based hedge fund, Ranger Capital, and Highland Capital Management was formerly based in Texas and named Ranger Asset Management.

- In the book, Ranger Capital’s manager is described as a reckless investment manager and “nasty” litigant. Jernigan has used the exact same language to describe Dondero in the bankruptcy proceedings.
- The novel describes the life settlement industry as “creepy” and Dondero invested in the life settlement industry.

“[D]isqualification strikes me as necessary: Judges can write novels, but they shouldn’t be drawing inspiration from pending cases.” Geyh said.

“[I]n my experience third person omniscient narratives reflect the author’s perception of objective reality... Here, a reasonable person could fairly assume that in her third person omniscient narrative, the author shared her narrator’s bias against hedge fund operators generally—a bias that calls her impartiality into question,” he added.

[Unrelated text omitted.]