

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

In re:	§	
	§	
Highland Capital Management, L.P.,	§	Bankr. Case No. 19-34054-sgj-11
	§	
Debtor.	§	
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	§	
Highland Capital Management Fund	§	
Advisors, L.P., now known as NexPoint	§	
Asset Management, L.P., and NexPoint	§	
Advisors, L.P.,	§	
	§	
Appellants,	§	Civil Act. No. 3:22-cv-02170-S
	§	
v.	§	
	§	
Highland Capital Management, L.P.,	§	
	§	
Appellee.	§	

STATEMENT OF THE ISSUES ON APPEAL

COME NOW NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (now known as NexPoint Asset Management, L.P.) (the “Appellants”), creditors and parties in interest in the above-captioned bankruptcy case and appellants in the above-captioned bankruptcy appeal, and, pursuant to Fed. R. App. P. 6(b)(2)(B)(i), list the following issues for the appeal of this matter to the United States Court of Appeals for the Fifth Circuit:

1. Whether the District Court erred by affirming the *Judgment* (the “Judgment”), signed by the Bankruptcy Court on September 13, 2022 (and entered on the docket September 14, 2022) in the above-captioned bankruptcy case.

2. Whether the District Court erred in affirming the Bankruptcy Court’s construction of the Payroll Reimbursement Agreements as “flat fee agreements” providing for “actual cost” based on a set monthly amount rather than the real “actual cost” for any given period based on



the actual “dual employees,” including by resort to inadmissible extraneous evidence to arrive at such construction.

3. Whether the District Court erred in affirming the Bankruptcy Court’s finding that (a) the Appellants never made a request to modify the amounts payable under the Payroll Reimbursement Agreements such that Highland was required to negotiate the modification in good faith, and (b) Highland did not fail to negotiate in good faith.

4. Whether the District Court erred in affirming the Bankruptcy Court’s conclusion that Highland, pursuant to the Shared Services Agreements, was not under a duty to inform the Appellants of potential overpayments under the Payroll Reimbursement Agreements and to trigger appropriate modifications to amounts payable.

5. Whether the District Court erred in affirming the Bankruptcy Court’s finding that the Appellants waived their claims for overpayments under all four contracts, including in light of the anti-waiver provisions in those contracts.

6. Whether the District Court erred in affirming the Bankruptcy Court’s conclusion that the Appellants breached the contracts and awarding Highland damages for breach of the four contracts for a period after the Appellants informed Highland that amounts payable thereunder needed to be modified.

RESPECTFULLY SUBMITTED this 9th day of April, 2024.

MUNSCH HARDT KOPF & HARR, P.C.

By: */s/ Julian P. Vasek*

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ATTORNEYS FOR THE APPELLANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 9th day of April, 2024, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the following counsel for the Appellee:

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